

**CITY OF NEWPORT BEACH  
POLICE DEPARTMENT**

**Date:** April 20, 2015

**To:** Jay Johnson, Chief of Police

**From:** Sergeant Court Depweg, Professional Standards Unit

**Subject:** Administrative Review of Officer Involved Shooting, DR#14-03952

**Involved Employees:** Officer Richard Henry #1157  
Officer Nathan Farris #1421

The following report is a summary and critical analysis of an officer involved shooting that took place on May 29, 2014. The shooting involved Officers Henry and Farris and was reported under the above listed DR#. This report was compiled after reviewing reports, interviews, and audio/video generated by the Newport Beach Police Department (NBPD), the Orange County District Attorney's Office, the Orange County Sheriff-Coroner's Office, and the Newport Beach Crimes against Person's Unit. Descriptions of the events and conclusions drawn relating to this event were made after considering the totality of the circumstances.

**SUMMARY OF EVENTS:**

On May 29, 2015, at approximately 2016 hours, the suspect, identified as Gerrit Dean Vos, entered the "7-Eleven" convenience store located at 1495 Superior Avenue, Newport Beach, California. Vos immediately began ducking in between isles as if he was hiding from someone. Vos made a statement that someone (NFD) was trying to kill him. As patrons entered the store, Vos focused his attention on them, eventually accosting two patrons. According to one witness, Vos armed himself with a screwdriver from one of the store shelves and began yelling and swearing at the witness. Vos stated, "*Get the Fuck out of here, Fuck you, Get the Fuck out of here!*"

Vos then directed his attention to a second patron who was purchasing items at the cashier counter. Vos yelled at the witness, "*That's the mother fucker right there!*" According to the witness, he feared Vos was going to stab him with the screw driver. The witness immediately ran out of the convenience store in order to get away from Vos. Vos chased the witness and ultimately threw the screwdriver at him, just missing him.

Vos re-entered the "7-Eleven" convenience store and continued to yell that he had a "strap." Vos asked patrons to shoot and kill him. A "7-Eleven" convenience store clerk called 911 and requested the police. Vos jumped over the cashier counter and continually asked, "*Where's the gun, where's the gun?*" while he searched through the shelves and cabinets behind the counter. Vos removed a pair of scissors (approximately 12" in length) from one of the cabinet shelves. While holding the scissors in his right hand, Vos grabbed one of the store clerks from behind. A second store clerk feared that Vos was going to stab his co-worker with the scissors. The store clerk reached for Vos' right hand in an attempt to disarm him. An altercation ensued for control of the scissors. During the altercation, the store clerk received an approximate 2-3" laceration to

the palm of his right hand from the scissors. After cutting the store clerk, Vos continued pacing throughout the store shouting statements such as, "Shoot me, shoot me!" and, "Where's the gun, where's the gun?"

At approximately 2021 hours Officer Kresge arrived on scene and observed Vos inside the store. According to Kresge, Vos appeared "visibly agitated." Kresge believed that Vos was under the influence of drugs or bath salts. Vos was standing behind the front counter looking out the business doors with his right hand behind his back near his waist, yelling that he had a hostage and threatening to kill whoever was outside. Kresge believed that Vos was trying to get him (Kresge) to shoot Vos.<sup>1</sup>

Additional NBPD officers arrived on scene as Vos barricaded himself in a storage closet, located behind the counter. Two NBPD vehicles were parked in a "V" formation directly east of the front entrance doors of the "7-eleven."<sup>2</sup> Officer Shen, armed with a 40 millimeter less lethal launcher, was positioned behind the driver side door of the vehicle parked on the north side. Officer Farris, armed with an AR-15 rifle was behind the passenger door of the same vehicle. Officer Henry, armed with an AR-15 rifle, was positioned behind the driver's door of the vehicle positioned to the south side of the east parking lot. Costa Mesa Police Department (CMPD) officers maintained perimeter coverage with the assistance of the Huntington Beach Police Department (HBPD) helicopter.

At approximately 2042 hours, Vos opened the door to the storage room and exited. Henry observed the door open and advised the other officers that the door was opening and that Vos was in possession of the scissors. Vos ran south from the door and upon clearing the west end of the front counter, turned east and ran toward the open entrance/exit doors. Vos had his left hand raised above his head as if he was going to stab someone. In his hand was a two prong metal merchandise display hook (approximately 6" in length). As Vos ran east toward the open doors and the officers, Officer Preasmeyer used the public address system in a NBPD vehicle to order Vos to drop the weapon. Vos disregarded the order and continued to run toward the officers, closing the distance at a rapid pace.

Officer Henry saw Vos was armed with a weapon, which he believed was a pair of scissors that Vos could utilize to harm the officers. This fear, coupled with his belief that Vos would be upon his fellow officers within a second, led Officer Henry to discharge his AR-15. Officer Farris stated that Vos sprinted at them with his left hand still elevated, "bobbing and weaving," while holding the metal merchandise display hook in what he described as a "stabbing position." Farris feared Vos was going to continue his advance and "kill his partner or himself" so he fired his AR-15.

Officer Shen stated that as Vos was running toward them, he had an object in his left hand, which was elevated above his head. When Vos reached the door to the "7-Eleven," it was Shen's intention to try and stop Vos' advancement. Shen fired the 40 millimeter less lethal launcher striking Vos in the abdomen. Shen stated the 40 millimeter projectile had no effect on Vos. Vos continued to advance on the officers at a rapid pace.

Vos fell to the ground just outside the entrance doors. An arrest team was assembled and, approximately 30 seconds later, Vos was taken into custody.

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<sup>1</sup> All other patrons had exited the store at this time, leaving Vos as the sole occupant inside the "7-Eleven."

<sup>2</sup> Refer to overhead photographs.

At approximately 2044 hours, NBFD paramedics were cleared to enter the scene and begin treating Vos. At approximately 2054 hours, Vos was transported to Western Medical Center by NBFD Medic 62, where he was later pronounced deceased.

#### **DECEDENT BACKGROUND:**

Gerrit Dean Vos was a white male, 22 years old, 5'08", and 150 lbs with a thin muscular build.<sup>3</sup> Vos had been arrested twice for possession of a controlled substance, at which time he was sent to drug court. Vos was arrested for possession of metal knuckles, which he was found guilty of in February of 2014<sup>4</sup>. Vos had been placed in temporarily custody as a juvenile for 459PC-Commercial Burglary in 2007. Due to the sealed records, I was unable to find the disposition of the case.

Vos had been diagnosed with schizophrenia and been prescribed [REDACTED], a prescription used to treat mental and mood disorders, such as schizophrenia and depression. Vos had been staying in a drug and alcohol treatment and rehabilitation center. Vos had been in and out of drug and alcohol rehabilitation centers over the past six years. According to family members and friends, Vos had been using methamphetamine intravenously. Based on the available information, Vos had a life long struggle with drug abuse.

On Tuesday, May 27, 2014, Vos called a witness/friend he had known since 2012, and asked if he could visit the witness at his apartment located at [REDACTED] Street, Newport Beach, California. The witness had not seen or heard from Vos for approximately 4-5 months prior to the telephone call. Vos arrived at the witness' apartment and gave a haircut to the witness. The witness described Vos as seeming "normal."

On Thursday, May 29, 2014, at approximately 1930 hours, Vos arrived unexpectedly at the witness' apartment. The witness now described Vos as being "not himself," and acting paranoid. Vos told the witness there were people outside watching him (Vos) and frequently yelled, "Come and get me!" and "I'm here...I'm here!" for no apparent reason and at no particular person. The witness' [REDACTED] son was also at the apartment, and the witness began to fear for his son's safety. At approximately 2000 hours, the witness gave Vos a skateboard and told him that he was scaring his son and that he could not remain at his apartment in the condition he was in. Vos left the apartment and did not return.

Vos arrived at the "7-Eleven" convenience store with the skateboard at 2016 hours.

Vos' postmortem blood samples indicated amphetamine and methamphetamine were located in his system.

#### **TACTICAL CONSIDERATIONS / RESPONSE**

The California Supreme Court held, in the case of Hayes v. County of San Diego, 57 Cal. 4th 662, that liability for negligence may arise from tactical conduct and decisions employed by law enforcement officers preceding the use of deadly force, when viewed as part of the totality of circumstances. The Court noted that Hayes reiterated what has been California law for over forty (40) years. "Law enforcement personnel's tactical conduct and decisions preceding the use

<sup>3</sup> Refer to Attached CDL Photo.

<sup>4</sup> Refer to the attached CII and Register of Actions.

of deadly force are relevant considerations *under California law* in determining whether the use of deadly force gives rise to *negligence* liability. Such liability can arise, for example, if the tactical conduct and decisions show, *as part of the totality of circumstances*, that the use of deadly force was unreasonable." (Emphasis added.)<sup>5</sup>

Hayes did not significantly change the law of California since it has, for years, imposed a duty on law enforcement to "act reasonably when using deadly force." The analysis of whether it was reasonable will focus on both the pre-shooting conduct of officers, as well as the moment when deadly force is used.<sup>6</sup>

NBPD Dispatch received multiple 911 calls regarding Vos. NBPD initially dispatched the radio call as a disturbance call / intoxicated male subject cursing and yelling at people inside the convenience store. Officer Kresge was assigned as the primary unit; however, this was not Officer Kresge's assigned beat. He responded from RD11. While en route, Officer Kresge was updated to "code 3," as additional information was relayed to NBPD Dispatch by additional reporting parties. Officer Kresge was now advised the male subject was holding a pair of scissors, hallucinating and stating someone (NFD) was after him with a gun, and there were people still inside the location. Responding units were provided the description of the suspect as a male, Hispanic, 20-30 years of age, 5'10," medium build, wearing a black shirt or jacket with jeans.

NBPD Dispatch could not find an additional unit to follow Officer Kresge due to deployment challenges and patrol shift change. Based on the fact there were no NBPD officers available, at the request of the supervisor, NBPD Dispatch requested CMPD to respond to assist with mutual aide.<sup>7</sup> In addition to the CMPD officers, HBPD HB-1 helicopter responded and arrived on scene. HB-1 advised responding units the suspect was inside the store and there were multiple people standing out in front of the "7-Eleven" store looking inside the location.

Upon arrival, Officer Kresge had all remaining employees inside "7-Eleven" exit the location. Officer Kresge maintained distance and visual contact of Vos, while remaining outside of the store, until Vos secluded himself into a back storage office. Officer Kresge updated the responding NBPD units that Vos was simulating having a handgun behind his back and asking Kresge to shoot him. Officer Kresge made his observations clear to the responding unit in order to warn the responding officers of a potential "suicide by cop" scenario. Officer Kresge described Vos as "extremely aggressive."<sup>8</sup>

Officer Henry arrived on scene and obtained an update from Officer Kresge. Based on the information he received, Officer Henry requested a K9 unit, a 40 millimeter launcher, and more police officers.<sup>9</sup>

<sup>5</sup>

<sup>6</sup> It is important to note, however, that these accommodations, assuming the Court rules that such must be applied, would be required when time allows for them. In a situation which requires immediate action, and delay is not possible, then the officers' actions must be appropriate in response to the threat forthcoming. That has always been the law.

<sup>7</sup> CMPD initially sent two police officers and a sergeant to the scene.

<sup>8</sup> HBPD HB-1 notified responding CMPD units of same.

<sup>9</sup> All items requested were less lethal options.

Additional officers arrived on scene. The officers had limited information why Vos was acting the way he was. The officers discussed Vos' actions, his demeanor, and his desire to be shot by police officers. The officers confirmed a felony crime of 245 PC – Assault with a Deadly Weapon had been committed. In addition to the crime, Vos was aware police officers were on scene, after having communicated to Officer Kresge that he wanted Officer Kresge to shoot him.<sup>10</sup> At this time, Vos had barricaded himself in a back storage room and by witnesses' accounts; Vos had armed himself with at least one weapon. Based on what the officers knew at the time, they determined the best course of action was to set up containment and begin to negotiate with Vos. The officers concluded that there was a danger to the community, themselves, and Vos if they allowed Vos to leave the location or they allow him to remain inside the store.

After collaborating with one another, the officers formulated a plan to set up and begin negotiations with Vos. Officer Bush took charge of implementing roles and responsibilities to multiple officers. Two NBPD units were placed in front of the store location in order to provide officers with cover and concealment. Officers were assigned less lethal options as well as lethal options. Officer Bush formulated and implemented a tactical plan in accordance with NBPD training. The "7-Eleven" parking lot was taped off from witnesses, patrons of the store, onlookers, and store employees.<sup>11</sup> At both vehicles, both lethal and not lethal options were set up. NBFD Medics were staged.

Canine Handler Fletcher and his Police Service Dog "Jardo" were deployed on scene. Officer Fletcher advised Sergeant Carpentieri of his parameters involving the deployment of his K9 if needed.

As officers were preparing to start to communicate with Vos via the public announcement system, Vos exited the back storage room with a weapon raised above his head. He sprinted towards officers, who were positioned in front of the store. It is unknown why Vos exited the storage room with a weapon and sprinted towards officers. Based on Vos' actions, Officers Henry and Farris shot Vos multiple times. The officers stopped firing once Vos appeared to no longer be a threat. Vos fell to the ground still moving and moaning.

Verbal commands were given to Vos to roll over, which he refused or was unable to do so. An arrest team approached Vos and placed him into handcuffs. Additional officers cleared the "7-Eleven" store for any additional persons. Multiple officers attended to Vos injuries as well as NBFD Medics were notified immediately to respond to provide medical treatment.

The officers in this case considered their tactics before attempting to make contact with Vos. They verbalized these considerations to one another in order to come up with an appropriate tactical plan given the limited amount of information they knew at the time. Once they established a plan of action, they began setting that plan in motion. It was Vos' actions that prevented the officers from being able to communicate a peaceful solution. Vos' aggressive attack on the officers left the officers no choice but to adapt their tactics to fit the given situation created by Vos' actions.

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<sup>10</sup> Officer Kresge was wearing his police uniform. Officer Kresge had parked his marked police car in front of the "7-Eleven" store.

<sup>11</sup> The containment prevented civilians from entering the taped off area, however, this did not prevent Vos from having the ability to leave the parking lot. Based on Officer Kresge's observations and Vos' simulation of a handgun, officers could not allow Vos mobility with a potential firearm. By limiting Vos' movement to a confined area, this prevented Vos from being able to approach pedestrians, traffic, and residential neighborhoods.

Officers Henry, Farris, and Shen were cognizant of their surroundings and their backdrop. Officer's shots were directed toward Vos, hitting him multiple times. The officers were able to make multiple hits on a swiftly moving target, and quickly neutralized the threat posed by Vos. Once Vos no longer posed a threat, medical aid was summoned and an assessment of the scene was conducted.

### **OFFICER INTERVIEWS**

The following officer summaries were taken directly from the OCDA's Office report.

*Officer Henry:*

Officer Henry gave a voluntary, consensual statement to OCDA investigators on June 3, 2014. According to Officer Henry, upon his initial arrival at the 7-Eleven he observed Vos yelling in the direction of Officer Kresge. Officer Henry observed that Vos was very agitated and angry. Officer Henry recalled that at one point Vos was yelling at Officer Kresge to shoot him {Vos}. Henry also observed Vos was making a shooting motion towards Officer Kresge while Vos' arm was wrapped up in a sweatshirt or cloth. Officer Henry's initial thoughts were that Vos' behavior was consistent with someone who had been using methamphetamine for Seven days straight."

According to Officer Henry, he was aware that Vos went inside the room behind the checkout counter of the 7-Eleven and closed the door. Henry observed Vos exit the room and come back into view of the officers. As Vos ran towards the officers outside the 7-Eleven, Officer Henry was able to see Vos' upper torso area and Vos' elevated hand with a metal object in it protruding out of his hand a good six or eight inches." Officer Henry heard the police public address system from his vehicle being used by another officer who was commanding Vos to "drop the weapon."

Officer Henry stated that he initially believed the metal object in Vos' hand to be scissors, since Officer Henry had earlier heard over dispatch that Vos had scissors in his possession. According to Officer Henry, Vos was in a full-on sprint towards the officers positioned outside of the 7-Eleven's open glass doors. According to Officer Henry, at this point he feared for the safety of his fellow officers if Vos was able to reach their position, and when Vos was about three or four feet from exiting through the 7-Eleven's entrance doors, Officer Henry made the decision to fire his weapon. Officer Henry believed Vos would have killed or attempted to kill his partners upon exiting the doors. Officer Henry stated that Vos fell within three feet of the officers and that Vos would have reached the officers in less than a second from the time he {Officer Henry} fired his weapon.

*Officer Farris:*

Officer Farris gave a voluntary, consensual statement to OCDA investigators on July 10, 2014. According to Officer Farris, while he was en route to the 7-Eleven after having been dispatched to respond there, he heard Officer Kresge broadcast over the radio that the subject (Vos) was inside of the store and motioning to Kresge as if he had a gun. Officer Kresge advised Officer Farris and the other officers en route that the male subject had gone inside the 7-Eleven's back room. After arriving at the 7-Eleven, Officer Farris also learned that Vos had assaulted someone with scissors.

When Officer Farris arrived on scene he initially took the 40 millimeter less lethal launcher from his vehicle. According to Officer Farris, prior to taking a position behind one of the vehicles, he noticed that Officer Shen had already retrieved a 40 millimeter less lethal launcher. At that point Officer Farris returned to his vehicle and retrieved the AR-15 patrol rifle, and relinquished the 40 millimeter less lethal launcher because he knew that Officer Shen already had that weapon system. Officer Farris then took up a position behind the passenger door of one of the NBPD police vehicles.

According to Officer Farris, he first saw the upper torso of Vos once Vos exited the back room of the 7-Eleven. Officer Farris stated that Vos exited the back room and ran "very rapidly," "bobbing and weaving from side to side" in an erratic manner. At this point, Officer Farris became concerned for his safety and the safety of the officers he was with.

After Vos went around the counter, Officer Farris stated that Vos ran towards the doors of the 7-Eleven. Officer Farris noticed a metallic object in Vos' left hand, which Vos held over his head in what Officer Farris considered a "stabbing position." Once Vos, who was running at full sprint towards the officers, came within approximately four feet from reaching the front doors, and 10 feet from the officers, Officer Farris feared that Vos was going to kill him or his partner, and Officer Farris made the decision to fire his AR-15.

**DISPATCH OPERATIONS / RESPONSE**

The NBPD Dispatch Center fielded 232 telephone calls in reference to this incident. The vast majority of the calls were from citizens complaining about the police and media helicopters overhead. In addition to the telephone calls, Dispatchers Duhon, Banks, Donnelly, and Dispatcher Trainee Hoyer handled over 43 radio calls during this incident.<sup>12</sup>

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<sup>12</sup> Dispatcher Anne Donnelly spent several minutes attempting to contact the OCDASAU. This took her away from her primary responsibility of answering phone calls, handling the radio, and/or speaking on the radio. This particular assignment is the responsibility of the CAP Supervisor or Watch Commander. Dispatcher Donnelly was

## **NBPD POLICY CONSIDERATIONS**

### **1. Officer Involved Shootings**

The NBPD policy on an OIS is set forth in manual section **310**. It reads;

The intent of this policy is to establish guidelines and procedures for the investigation of an incident in which a person is injured as the result of a police shooting and to ensure that such incidents are investigated in a fair and impartial manner.

#### **310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR**

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
  1. Officer Injured: If possible, an officer shall be assigned to accompany the injured officer to the hospital.
  2. Suspect or Other Party Injured: If possible, an officer shall accompany the suspect or other injured party to the hospital. The officer is to secure and maintain custody of the suspect until properly relieved. The officer shall secure all the suspect's clothing and property. Property taken from the suspect shall be considered evidence until released by the assigned investigator.
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s).
  1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects.
  1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information.
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- (e) Provide all available information to the Watch Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.

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instructed by the Incident Commander and Watch Commander to perform the search. We need to remind our employees of their particular roles and responsibilities and make an effort to stick to those roles.

(f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel. A coordinated effort to apprehend any outstanding suspect(s) should be immediately initiated. Issues to consider:

1. Establish a large perimeter
2. Initiate a crime scene log. Authorized entry into the crime scene shall be limited to assigned investigating personnel via a designated point.
3. A Command Post may be established.

(g) Coordinate efforts to identify all witnesses, sworn and civilian. Civilians should be asked to remain at the scene to be interviewed by investigators or be voluntarily transported to the Department to be interviewed. Any statements should be recorded.

(h) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.

1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or be transported to the station by other officers. Do not reload or unload the involved officer's handgun except in an emergency.

Lieutenant Lewis, Sergeant Rasmussen, Sergeant Carpentieri, Sergeant Johnson were on scene for this OIS. Lieutenant Lewis and Sergeant Rasmussen set up a command post with a media staging area. Officers Houston and Maslin were assigned to stay with Vos as he was transported to Western Medical Center. Sergeant Johnson obtained officer safety statements from both Officer Henry and Officer Farris. The scene was contained, a crime scene log was initiated and maintained, and the appropriate notifications were made. All witnesses were identified and interviewed. Officers Henry, Farris, and Shen were transported to NBPD, where they were accompanied by a co-worker, their Police Association Representative, and able to contact their representing attorney. The AR-15s and 40 millimeter launcher were left on scene. No personal weapons were removed from any of the involved officers.

## **2. Administrative Investigative Team**

The NBPD policy on who is to be notified during a critical incident is set forth in manual section **310**. It reads;

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Detective Division Commander
- District Attorney OIS rollout team
- Administrative Investigation Team
- Trauma Support Team
- Coroner (if necessary)
- Officer Representative (if requested)
- Police Management Association and/or Police Association

On May 27, 2014, PSU and the Executive Officer pulled all Administrative Call Out lists from both the Watch Commander and Dispatch Offices. This was done with the intent of updating the listed due to retirements and transfers. Even though the lists were not available to our personnel, the appropriate persons were notified.

### **3. OIS Investigation Assignments**

The NBPD policy that establishes guidelines and procedures for the investigation of an incident in which a person is injured as the result of a police shooting is set forth in manual section **310**. It reads;

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of any suspect(s) by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency with the approval of the Chief of Police or a Division Commander
- (b) A criminal investigation of the involved officer(s) conducted by an outside agency
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

The Orange County District Attorney's Special Assignment Unit (OCDASAU) responded to the OIS scene and conducted an independent and thorough investigation into the actions of Officers Henry and Farris. Based on their investigation, it was determined that Officers Henry and Farris acted in lawful defense of themselves or others and were legally justified under the circumstances.<sup>13</sup>

The NBPD Crimes against Person (NBPDCAP) conducted an independent and thorough investigation into the actions of the suspect. Based on the available information, it was determined the suspect committed the crime of 245(a) CPC – Assault with a Deadly Weapon against both NBPD Officers and a citizen.

The NBPD Professional Standards Unit (NBPDPSU) conducted an independent and thorough administrative investigation in order to determine if there were any policy violations committed by any involved NBPD parties and to identify any future training and/or procedural changes needed to better the department.

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<sup>13</sup> Penal Code 835a states; Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

#### 4. Media Response

The NBPD policy governing NBPD's media response during an OIS is set forth in manual section **310.5.4**. It reads;

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Watch Commander, Detective Division Commander and Press Information Officer in the event of inquiries from the media. It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law.

As expected, NBPD Dispatch received multiple media inquiries following the OIS. NBPD Dispatch requested Public Information Officer (PIO) Jennifer Manzella to respond to the city in order to handle all media inquiries. PIO Manzella responded to the scene, specifically to the media staging area already established. PIO Manzella conducted one live interview with KCAL 9 News. All other media inquiries were handled via a single press release.

I reviewed all media coverage posted online and aired on television. Based on my review, I found the coverage to be in favor of the NBPD.

#### 5. Use of Force

The NBPD policy on the use of deadly force is set forth in manual section **300.4**. It reads;

#### **300.4 DEADLY FORCE APPLICATIONS**

Use of deadly force is justified in the following circumstances:

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

(b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

Officers Henry and Farris found themselves faced with a suspect, who had chased multiple citizens inside and outside the "7-Eleven" convenience store and had cut one employee with a pair of scissors. The suspect had also thrown a screwdriver at a customer in an adjacent

parking lot. The suspect subsequently charged the officers at a full sprint with his left hand raised over his head, armed with a metal two prong display hook, described by many witnesses as the action of a person who was going to stab another person. The officers were positioned between the suspect and multiple witnesses/potential victims had they not stopped the suspect from progressing past them. If the suspect was allowed to exit the store and approach the onlookers, the suspect would have had the ability to seriously injure or kill a citizen or police officer. The suspect had not complied with a lawful order to drop his weapon and gave the officers no choice to negotiate with him. The threat to the officers and other persons surrounding the scene was clear and unavoidable. The officers made a split second fearful decision to deploy deadly force on the suspect to protect the lives of their fellow officers and the public.

The officers fired at the suspect until his threatening actions stopped. Once the suspect no longer posed a significant threat to the officers, both Officer Henry and Officer Farris stopped firing their weapons.

All available evidence and information indicates that the suspect posed an immediate threat of life or serious bodily injury to officers and other persons surrounding the scene. Officers Henrys and Farris' actions were objectively reasonable, given the totality of the circumstances.

#### **6. Range Qualifications**

The NBPD policy governing weapons and range qualifications is set forth in manual section **312**. It reads;

This policy establishes procedures for the acquisition, use, and documentation of training in the use of firearms.

#### **312.4 FIREARMS QUALIFICATION**

All sworn personnel shall attend range training and qualify bi-monthly with their duty weapon.

Rick Henry completed AR-15 training on 02-28-2013 and on 01-14-2014, both at the NBPD range.

Nathan Farris completed AR-15 training on 02-19-2013 and on 02-25-2014, both at the NBPD range.

#### **7. Patrol Rifles**

The NBPD policy governing patrol rifles is set forth in manual section **432**. It reads;

In order to more effectively and accurately address the increasing level of fire power and body armor utilized by criminal suspects, the Newport Beach Police Department will make patrol rifles available to qualified patrol officers as an additional and more immediate tactical resource.

#### **432.6 DEPLOYMENT OF THE PATROL RIFLE**

Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (a) Situations where the officer reasonably anticipates an armed encounter.
- (b) When an officer is faced with a situation that may require the delivery of accurate and effective fire at long range.
- (c) Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When an officer reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage.
- (e) When an officer reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.

Officer Henry deployed one Colt AR-15A Serial #LBD020095 / FC11223 Remington Ammunition.

Officer Farris deployed one Colt AR-15A Serial #LBD001239 / FC11223 Remington Ammunition.

#### **8. MDC Use**

The NBPD policy governing the use of the MDC is set forth in manual section **448**. It reads;

The use of the Mobile Data Computer (MDC) will include, but is not limited to, transmitting and receiving calls for service; inquiries through local, state and national data bases; point to point messaging; as well as completing reports and accessing various Department resources. Employees shall comply with all federal and state rules and regulations and Department policies that apply.

#### **448.2 MDC USE**

The MDC shall be used for official police communications only. Messages that are of a sexual, racist, or offensive nature, or otherwise critical of any member of the Department are strictly forbidden.

I reviewed all MDC messages sent and received from the onset of the radio call through the completion of the scene and found our officers abided by the above guidelines.

#### **9. Uniform/Equipment Conditions**

The NBPD policy establishing the uniform and equipment approved for officers to wear is set forth in manual section **1046**. It reads;

#### **1046.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT**

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

The uniform policy of the Newport Beach Police Department is established to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms. Both Officer Henry and Officer Farris were dressed in their Class B Uniform. This included a Sam Browne, black boots, and the required uniform shirt with NBPD Patches and Badge.<sup>14</sup>

#### **10. Code 3 Driving**

The NBPD policy establishing officers' response to call for service, specifically code 3 driving is set forth in manual section **316**. It reads;

#### **316.4 INITIATING CODE 3 RESPONSE**

If an officer believes a Code-3 response to any call is appropriate, the officer shall immediately, or as soon as practical, notify Dispatch.

#### **316.5 RESPONSIBILITIES OF RESPONDING OFFICER(S)**

Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle. The decision to continue a Code-3 response is at the discretion of the officer.

I reviewed Officers Kresge, Henry, Bush, Long, Shen, Fletcher, and Sergeant Carpentieri's code 3 driving and found them to be within policy.

#### **11. Report Preparation**

The NBPD policy establishing officers' report preparation is set forth in manual section **344**. It reads;

Report preparation is a major part of each officer's job. The purpose of reports is to document sufficient information to refresh the officer's memory and to provide sufficient information for follow-up investigation and successful prosecution.

I reviewed all of the NBPD reports as well as the OCDA Investigators' reports and found them to be thorough and complete.

#### **TRAINING TOPICS**

##### **MVS Hours of Operation:**

The MVS systems in the responding units continuously ran for a combined total of approximately 39.6 hours. They were not shut off until OCDA investigators responded to the scene and shut them off. The entire incident lasted approximately 45 minutes. By allowing the MVS to continually record, the department opens the door where we may have to explain inappropriate comments, investigative techniques, unrelated conversations, attorney-client work

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<sup>14</sup> For details of the officer's dress, refer to photographs of the officers taken after the shooting.

product, etc. which could be captured hours after the incident. These conversations are discoverable and made available to a plaintiff's attorney if a civil/criminal case is to come about.

I reviewed all the MVS recordings and found none of the potential issues listed above; however, I do still recommend a change in practice. PSU's recommendation is that once a scene is considered under control and the on-scene supervisor is confident there is no need to continue to document via video/audio and all parties are in accordance with NBPD Policy 446, the MVS in all units are shut off. The exception to this would be to document a witness statement, traffic control, etc.

**Maintaining Crime Scene:**

The crime scene was well established by responding officers. Crime scene tape was set up blocking the entire "7-Eleven" parking lot. In addition, officers re-directed traffic both on 15<sup>th</sup> Street and Superior Avenue. Officer Gilbert was positioned at the front entrance doors of the store. This was in direct relation to where the shooting occurred and Vos ultimately came to rest. I found no reason to have an officer posted there for several hours. The scene was controlled. Again, this positioning of the officer may subject the department to answer questions about potential scene contamination, when it could have been avoidable.

**Dispatch Call Center:**

Dispatch received a few calls from officers asking to confirm if there was an OIS and asking if they needed to come into the station to assist. PSU understands people want to help; however, dispatchers are extremely busy during any type of critical incident. Employees need to maintain discipline and if needed will be called in to assist.

**INVESTIGATIVE INSIGHT**

Officers Henry and Farris were faced with a suspect engaged in the commission of a felony and armed with a metal two prong display hook. The suspect appeared to be hallucinating due to his narcotics use and/or his mental health state of mind. He repeatedly told officers and citizens to shoot and kill him. The level of violence displayed by the suspect in this case limited the force options available to the involved officers, so that deadly force was, at the final moment, the available option.

**CONCLUSION**

Officers Henry and Farris' use of deadly force case was justified and followed the policy of the Newport Beach Police Department. The tactics used by officers were sound and consistent with the training they have received. I recommend no further action. For details of the OCDASAU's investigation, refer to the attached OCDASAU Report.

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Respectfully Submitted,

  
Court Depweg, Sergeant  
Professional Standards Unit

Approved,

Jeff Brouwer, Lieutenant  
Executive Officer

Approved,

Jay Johnson  
Chief of Police

**ATTACHMENTS:**

- Attachment #1- Overhead Photographs of Scene
- Attachment #2- Vos CDL
- Attachment #3- Vos CII / Associated Reports
- Attachment #4- CPOA Client Alert
- Attachment #5- Photographs of Officers Henry, Farris, & Shen
- Attachment #6- NBPD Reports
- Attachment #7-OCDASAU Report



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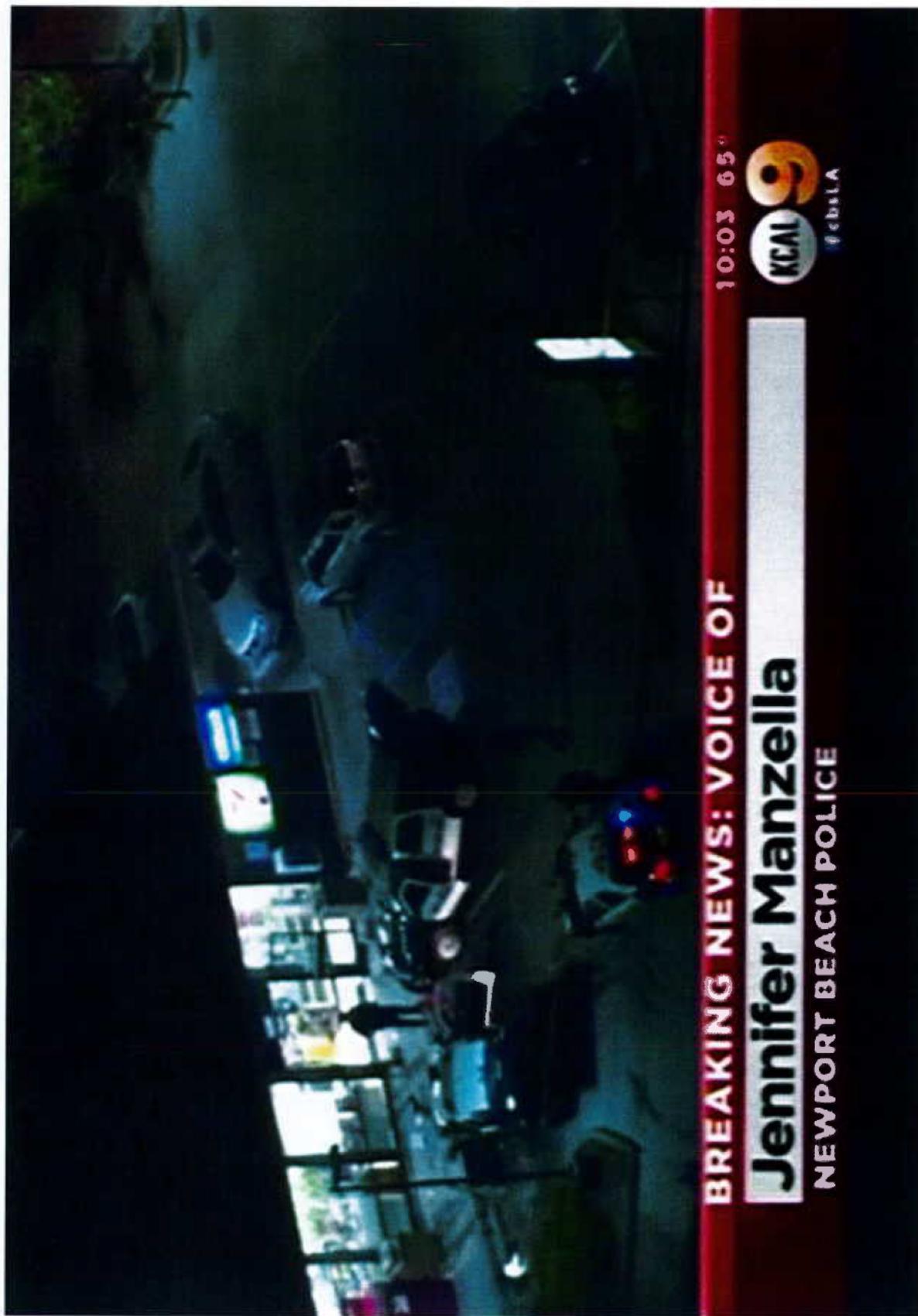


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NEWPORT BEACH POLICE

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# CPOA CLIENT ALERT



March 25, 2015

## Must Law Enforcement "Reasonably Accommodate" Violent, Mentally Ill, Suspects When Taking Them Into Custody?

On March 23, 2015, the United States Supreme Court heard oral argument in the case of San Francisco v. Sheehan, involving the interaction between police and a mentally ill person.

The issue presented focused on whether or not law enforcement, when confronting someone they know is mentally ill, must comport with the American Disabilities Act (ADA) and "reasonably accommodate" that person before resorting to the use of force?

Reasonable accommodations could be, for example, communicating with the person for an extended period of time; containing the scene and calling for specialized assistance; or allowing time to pass so the situation calms down.

Law enforcement's concerns include, should the Supreme Court decision favor Sheehan's claims, that it would work to hinder proven police tactics, place officers and possible innocent bystanders at risk, and open police departments to even more vicarious liability lawsuits.

### **Facts**

The case involves Teresa Sheehan who was a resident of a group home in San Francisco and suffered from mental illness, schizophrenia, including delusions and hallucinations. The police had been called by her social worker after Ms. Sheehan had threatened to stab the social worker, and locked herself in her room. Her counselor had determined that she needed to be taken into custody for involuntary psychiatric evaluation and treatment. The police had been briefed on the situation and were aware of her mental problems.

The police entered her room and attempted to communicate with her when she threatened them with the knife. They retreated out of the room but then went back, in an effort to take her into custody. They used pepper

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Written by: Martin J. Mayer, Esq. with the firm of Jones & Mayer.

The firm is located in Fullerton, California, and is a public sector law firm which focuses its attention on representing the interests of law enforcement in cities and counties throughout the State of California.

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spray and when that failed they tried to physically control her when she, again, threatened and approached them with the knife. At that time, they fired their weapons and hit her five times. She survived and ultimately sued for violation of her Fourth Amendment right against unreasonable search and seizure, as well as for violation of the ADA.

At trial, the district court held that the ADA did not apply to situations where an officer tries to arrest an armed and violent individual and dismissed her law suit. However, the Ninth Circuit U.S. Court of Appeal reversed and remanded the case for trial.

"We hold that, on the facts presented here, there is a triable issue whether the officers failed to reasonably accommodate Ms. Sheehan's disability when they forced their way back into her room without taking her mental illness into account or employed generally accepted police practices for peaceably resolving a confrontation with a person with mental illness." The City petitioned for review by the U.S. Supreme Court, which accepted the case.

#### **U. S. Supreme Court Hearing**

During oral argument, it appeared that most justices did not think the ADA would apply in circumstances where the individual was armed and dangerous. However, from questions and comments by the justices it also appeared that they might be inclined to order the matter back to the district court for trial.

Justice Antonin Scalia said the San Francisco case should be dismissed, and returned for trial, because the San Francisco city attorney had acknowledged that the police are bound by the ADA under certain circumstances.

Justice Sonia Sotomayor said that even though the officers thought Sheehan was a danger to herself or others, going back into the room the second time wasn't justified. She said the officers "could have waited and tried to talk her out." She also noted that the ADA was "intended to ensure that police officers try mitigation in these situations before they jump to violence."

However, Justice Elena Kagan stated that when officers are facing someone who is armed and "may be violent at any time," there is "some reason to give the police officers who have to deal with them the benefit of the doubt."

Sheehan's attorney argued that the case involved a "factual dispute" and, therefore, should be decided by a jury, to which Justice Scalia responded, "Exactly, I don't know why we took this case."

#### **HOW THIS AFFECTS YOUR AGENCY**

Obviously, until the Supreme Court issues a ruling on this matter, which should occur before the end of June, there is no direct impact on law enforcement agencies. However, it behooves all to recognize that the courts are looking, more frequently, at how law enforcement handles situations which result in the use of deadly force.

As an example, on August 19, 2013, the California Supreme Court held, in the case of Hayes v. County of San Diego, 57 Cal. 4th 662, that liability for negligence may arise from tactical conduct and decisions employed by law enforcement officers preceding the use of deadly force, when viewed as part of the totality of circumstances.

That case also involved a person who suffered from mental illness and the officers had been told that he had threatened to commit suicide.

The Court noted that Hayes reiterated what has been California law for over forty (40) years. "Law enforcement personnel's tactical conduct and decisions preceding the use of deadly force are relevant considerations *under California law* in determining whether the use of deadly force gives rise to *negligence* liability. Such liability can arise, for example, if the tactical conduct and decisions show, *as part of the totality of circumstances*, that the use of deadly force was unreasonable." (Emphasis added.)

Hayes did not significantly change the law of California since it has, for years, imposed a duty on law enforcement to "act reasonably when using deadly force." The analysis of whether it was reasonable will focus on both the pre-shooting conduct of officers, as well as the moment when deadly force is used.

In the Sheehan case, however, the analysis will go beyond issues of negligence and focus on whether or not there is a duty, under the ADA, to take steps before using deadly force, which appear to be necessitated due to the subject's mental illness.

In light of the focus of the courts, it might be appropriate for law enforcement to "get ahead of the curve" and provide additional training to officers regarding the handling of situations such as these.

It is important to note, however, that these accommodations, assuming the Court rules that such must be applied, would be required when time allows for them. In a situation which requires immediate action, and delay is not possible, then the officers' actions must be appropriate in response to the threat forthcoming. That has always been the law.

It is most important for agencies to confer with their legal advisors when interpreting and applying the law. However,

and as always, if you wish to discuss this case in greater detail, please feel free to contact me at (714) 446 - 1400 or via email at [mjm@jones-mayer.com](mailto:mjm@jones-mayer.com).

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NYPD Officer  
Richard Henry

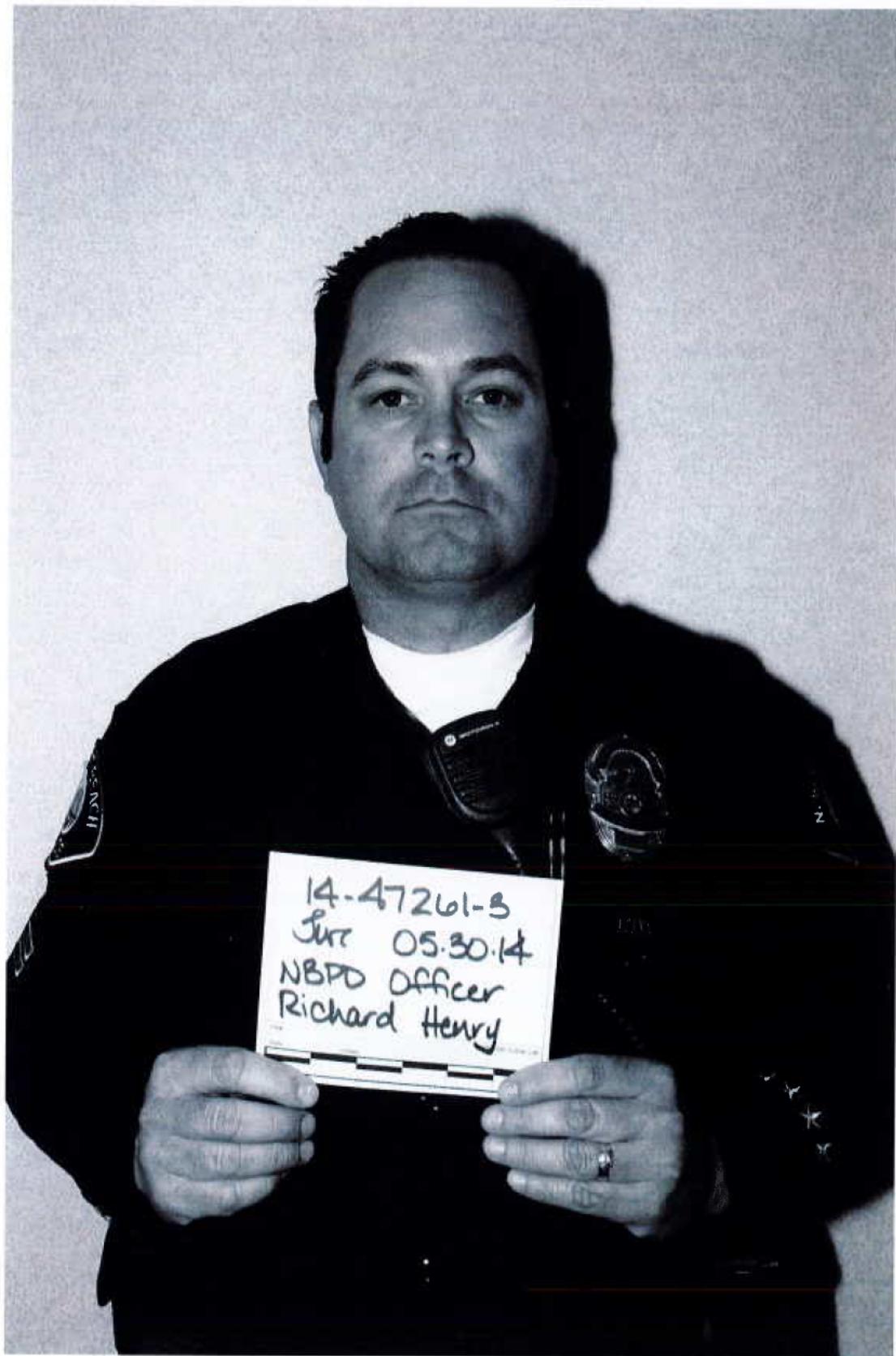
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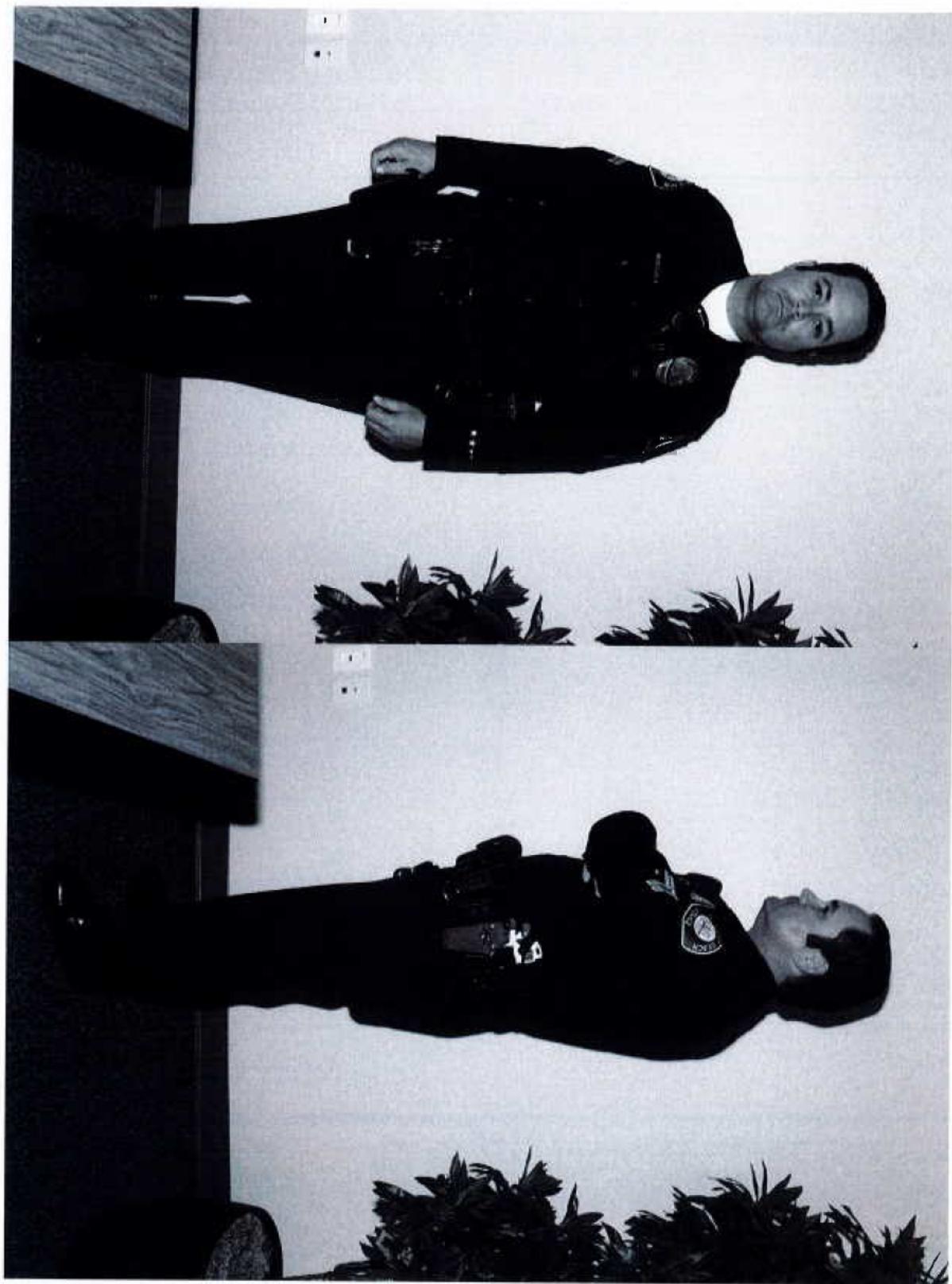
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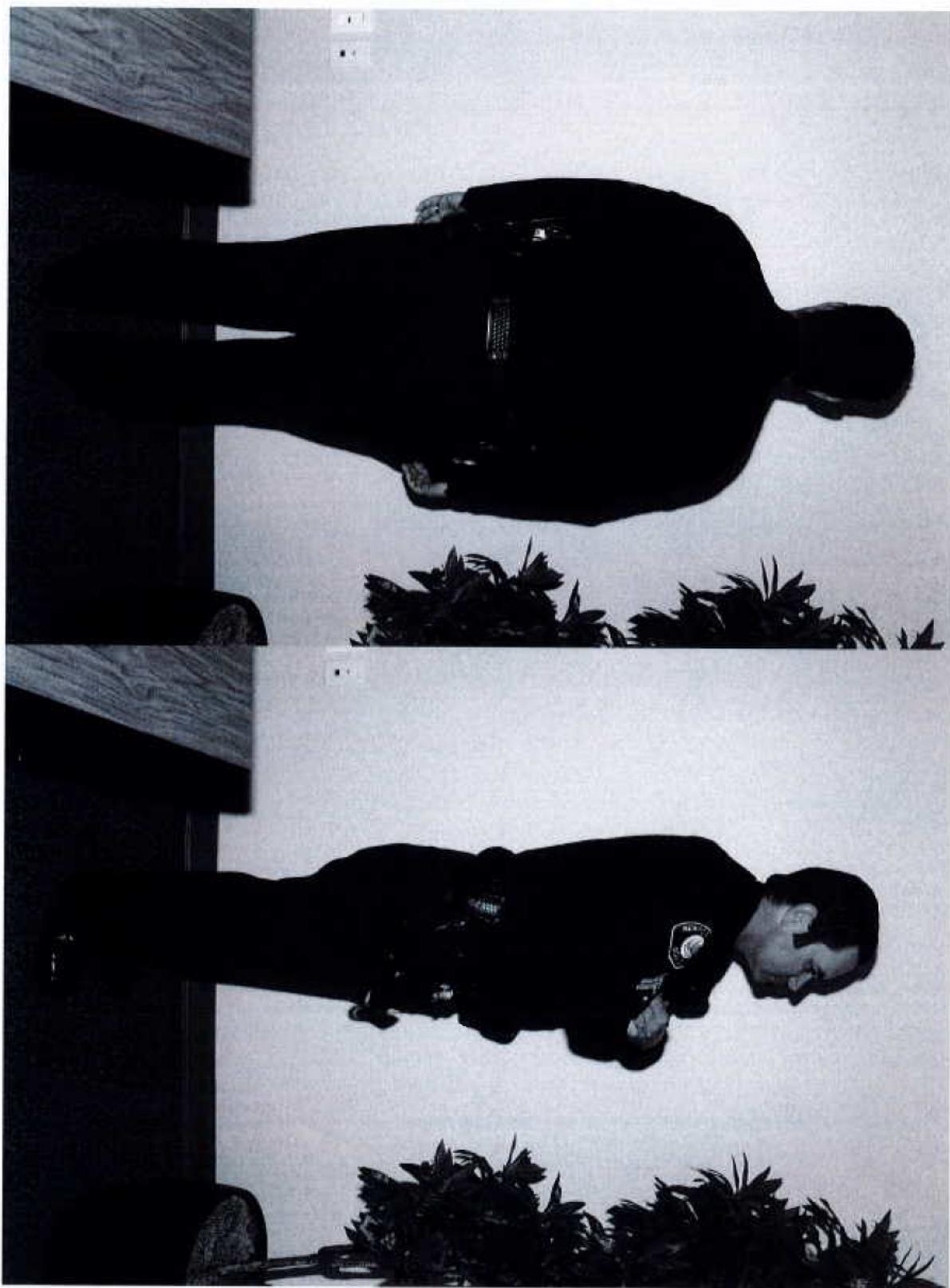
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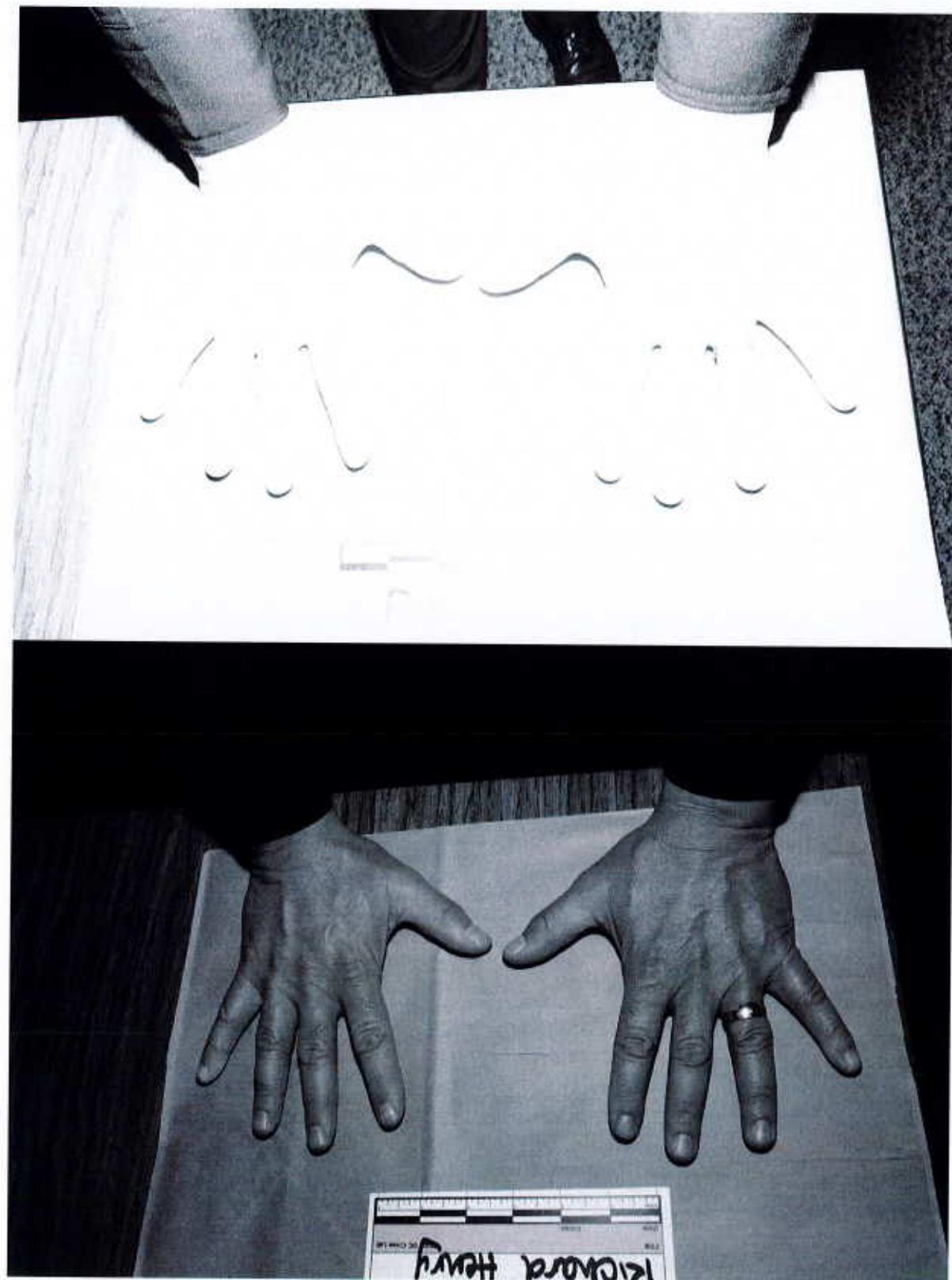
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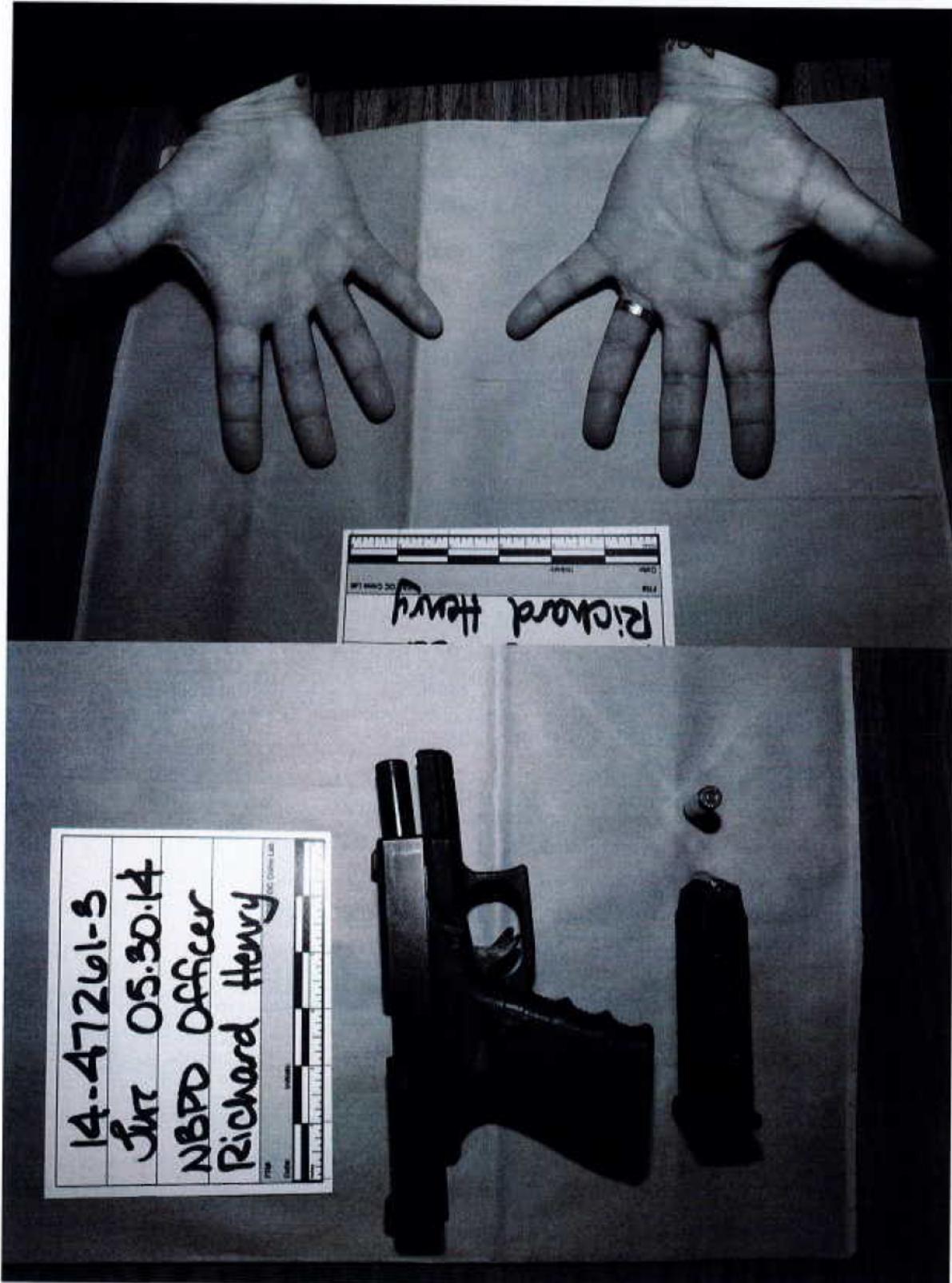




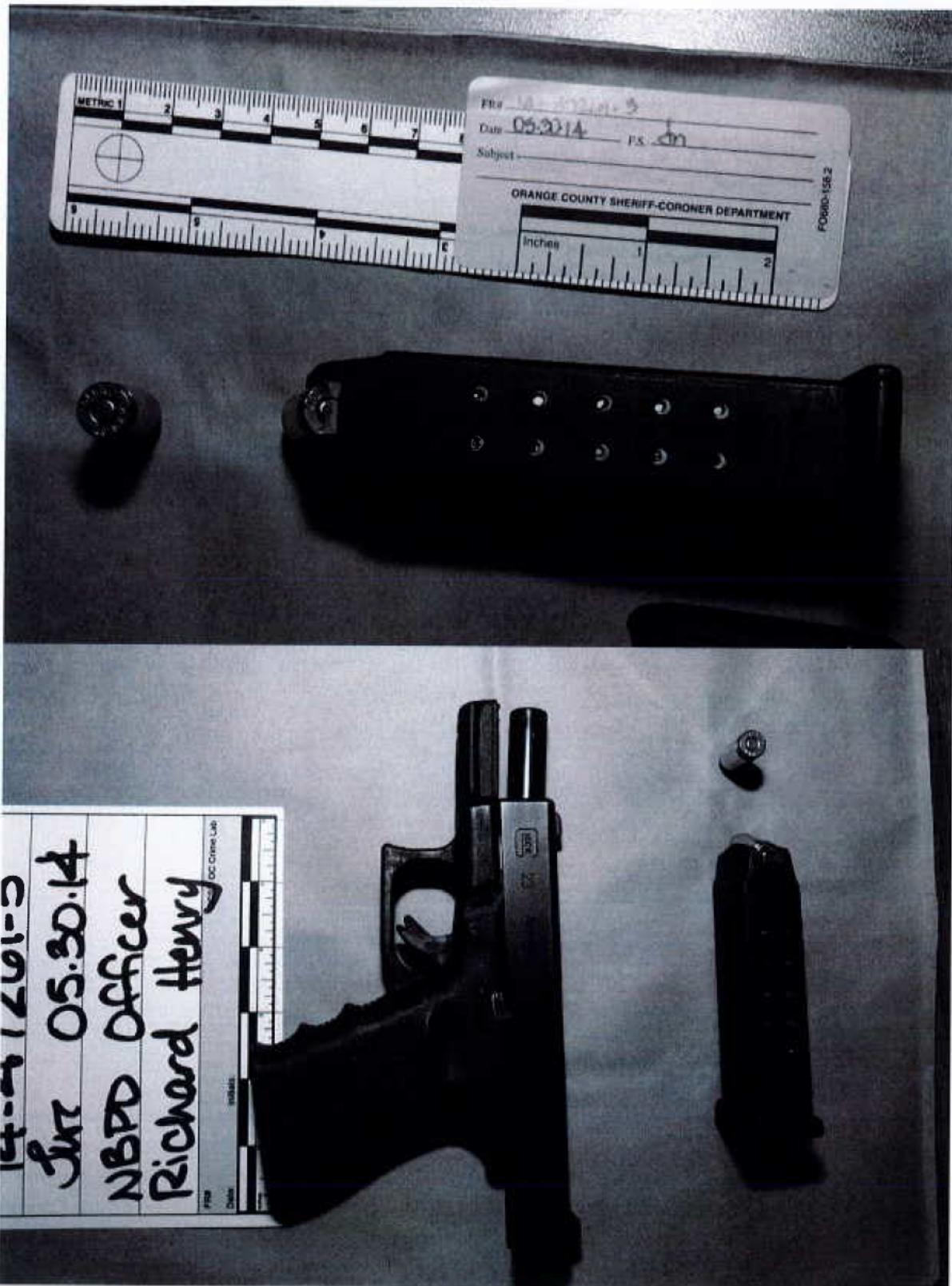


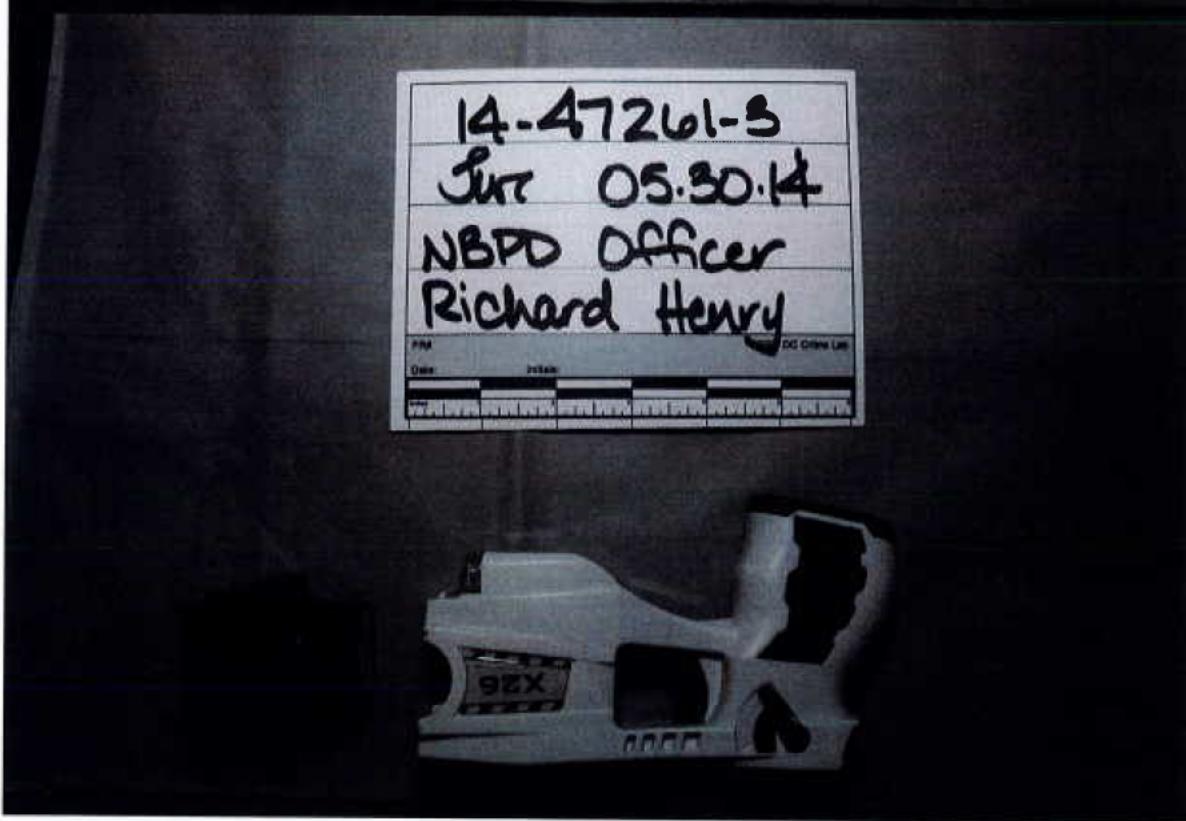


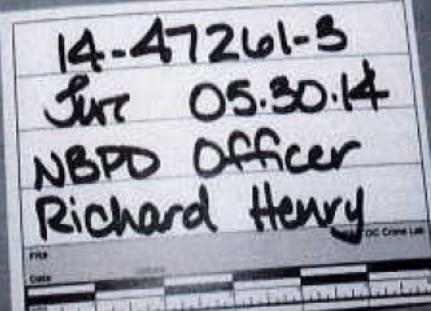
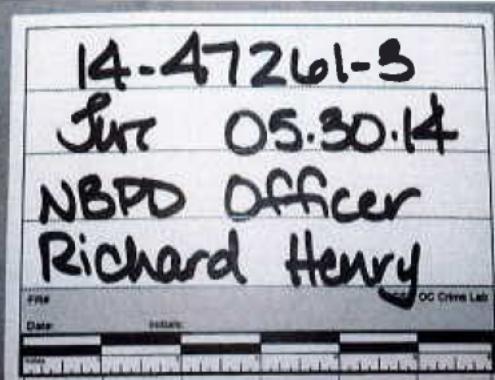






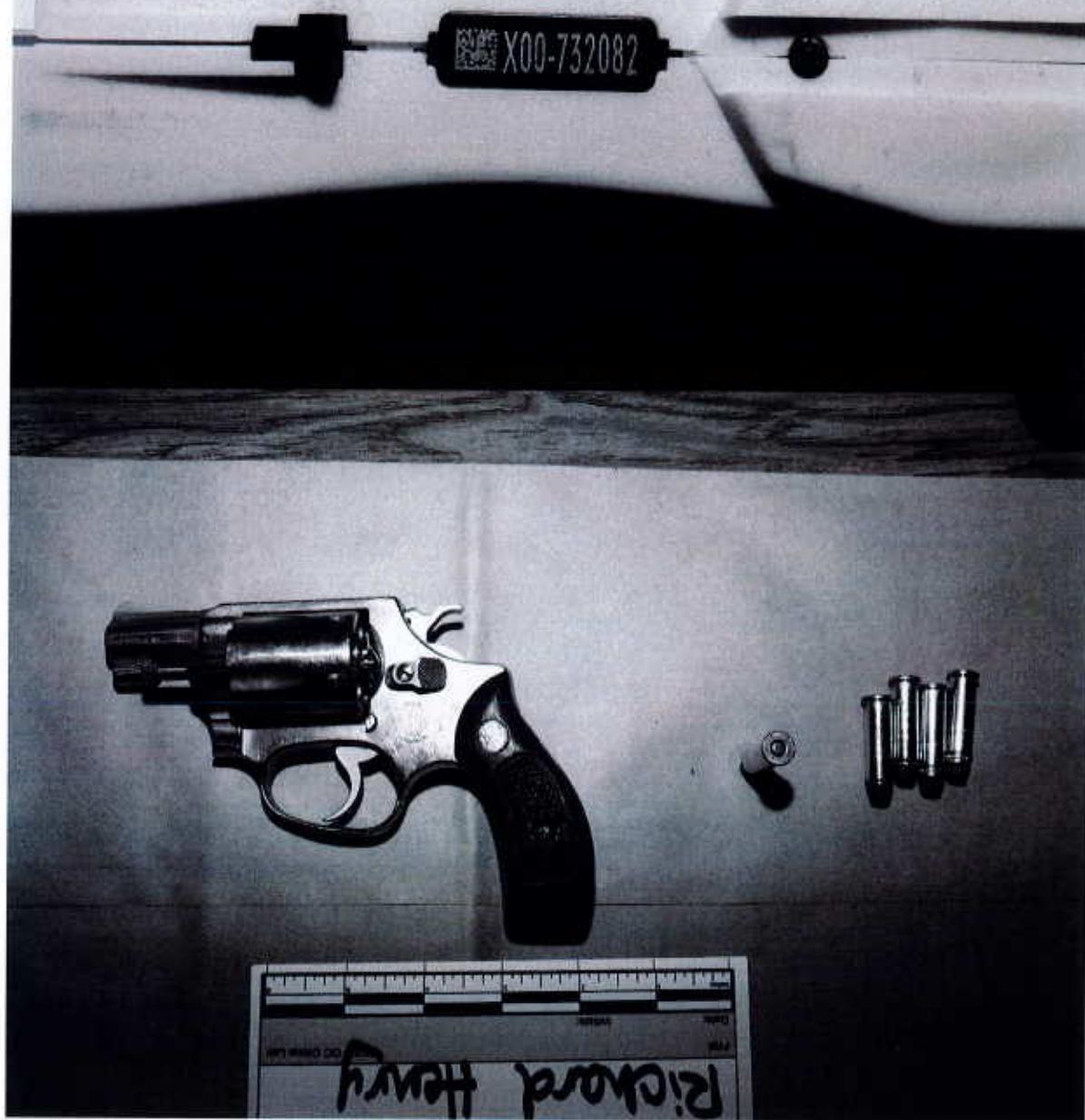
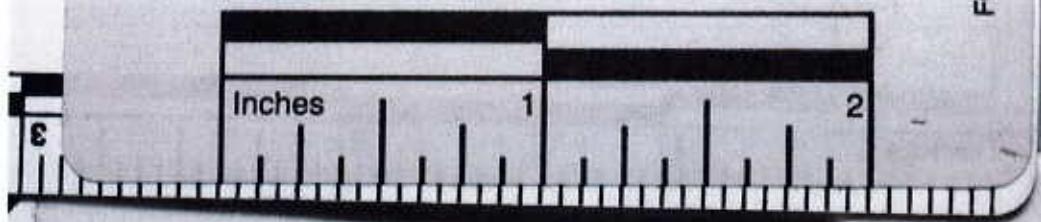






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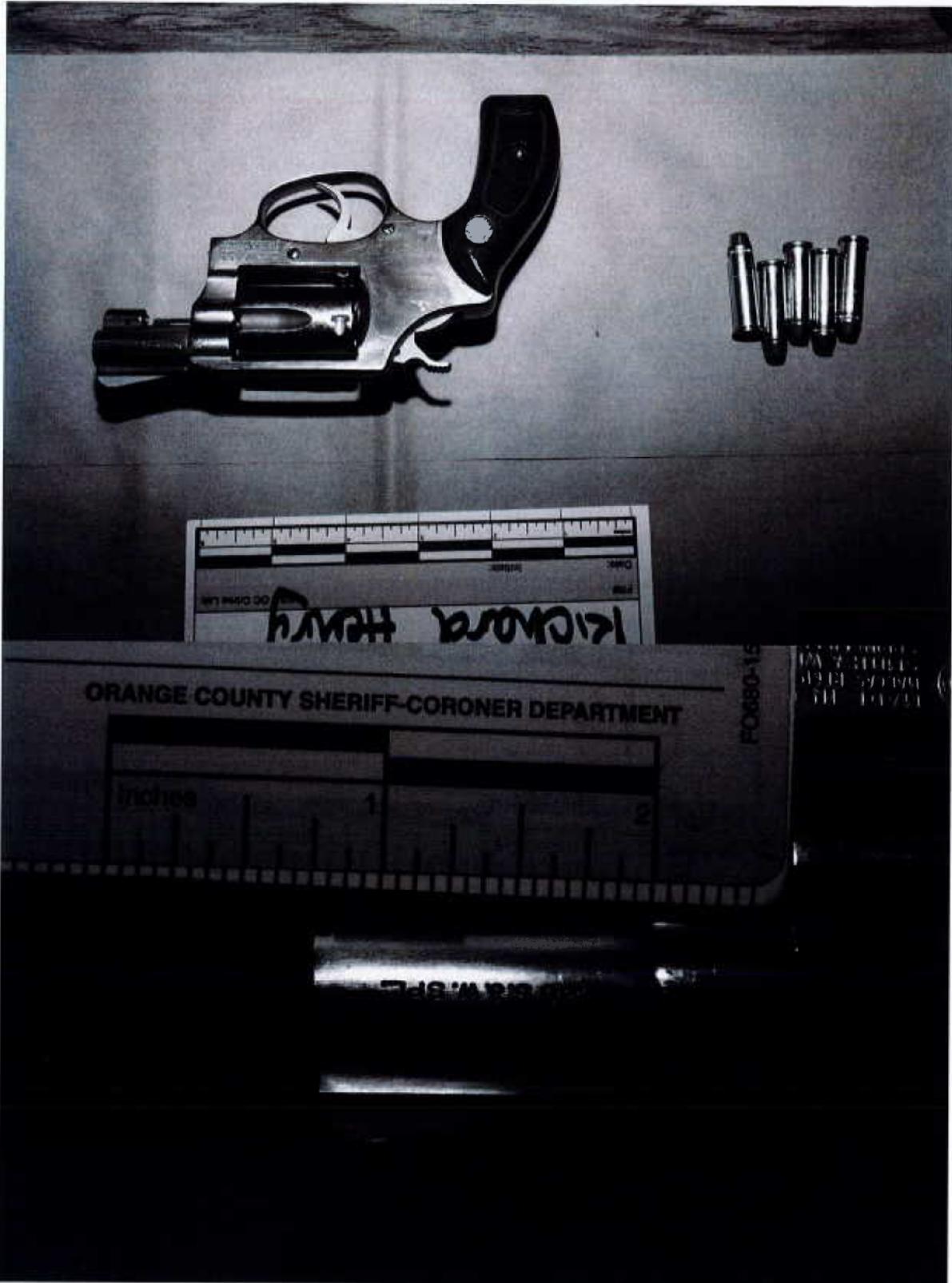
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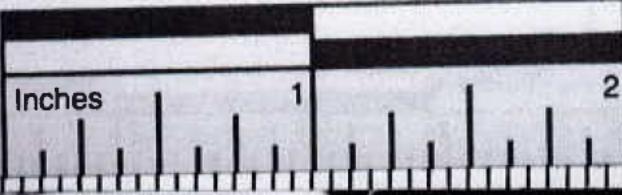
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Nathan Farris

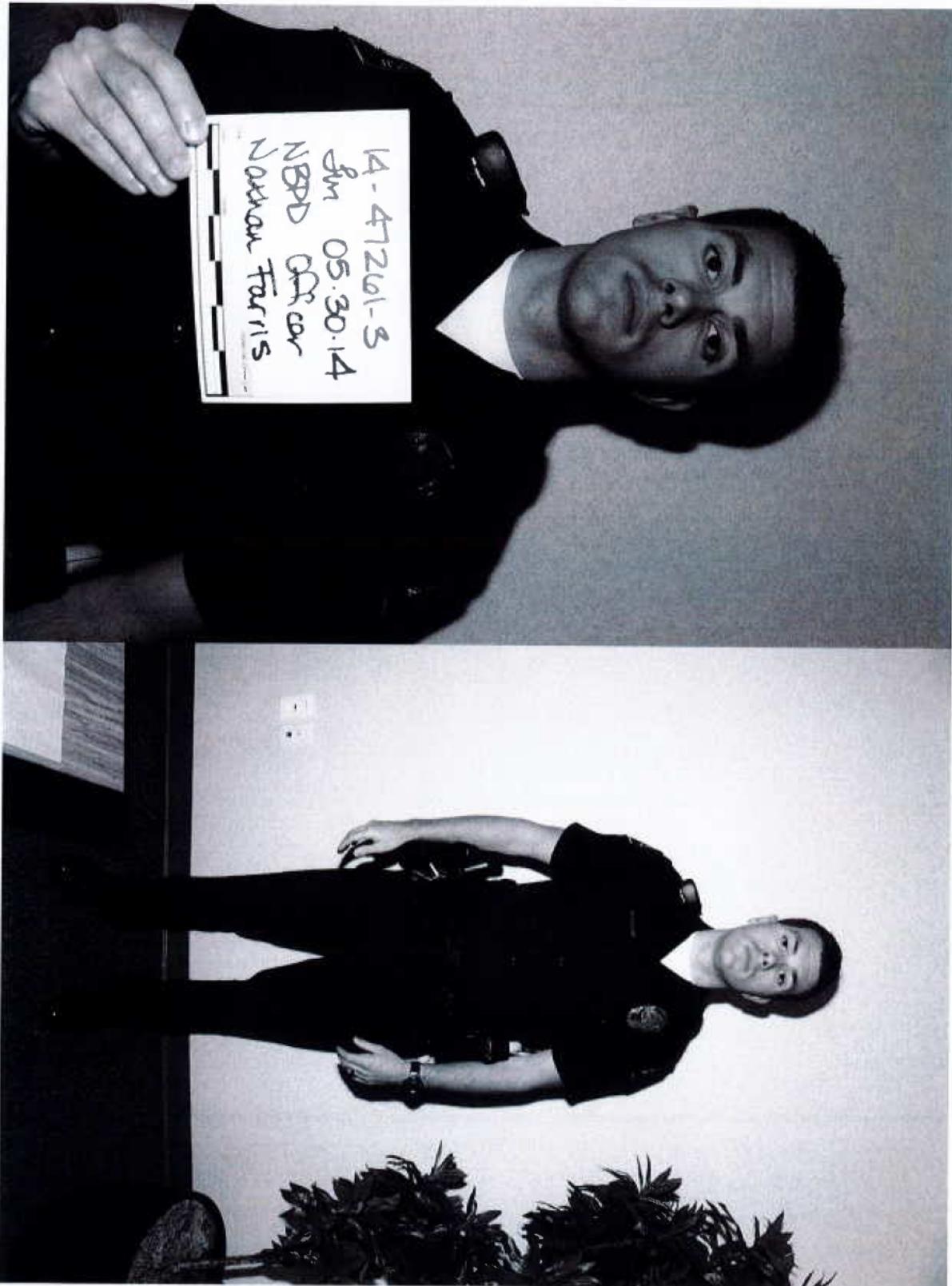
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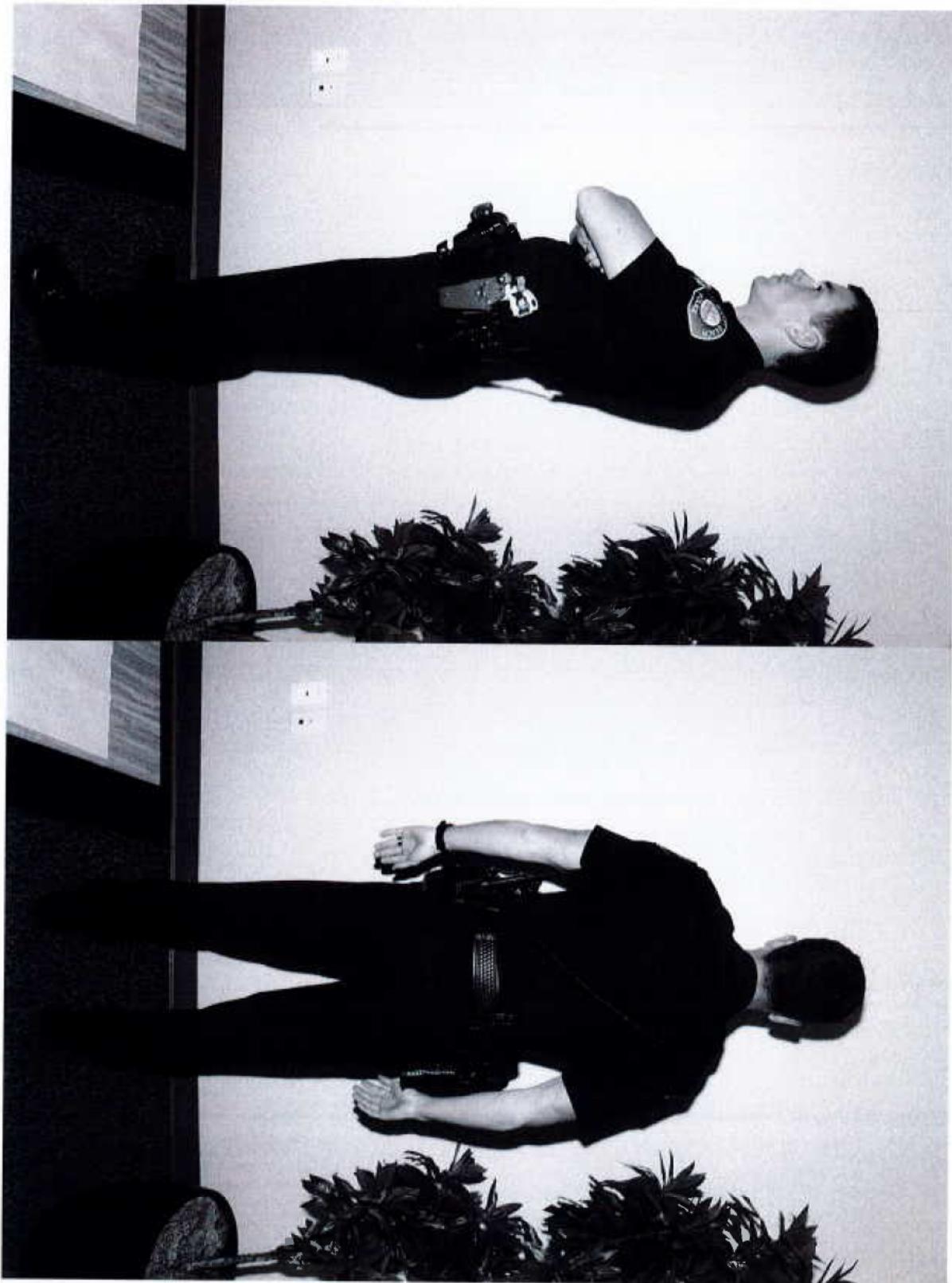
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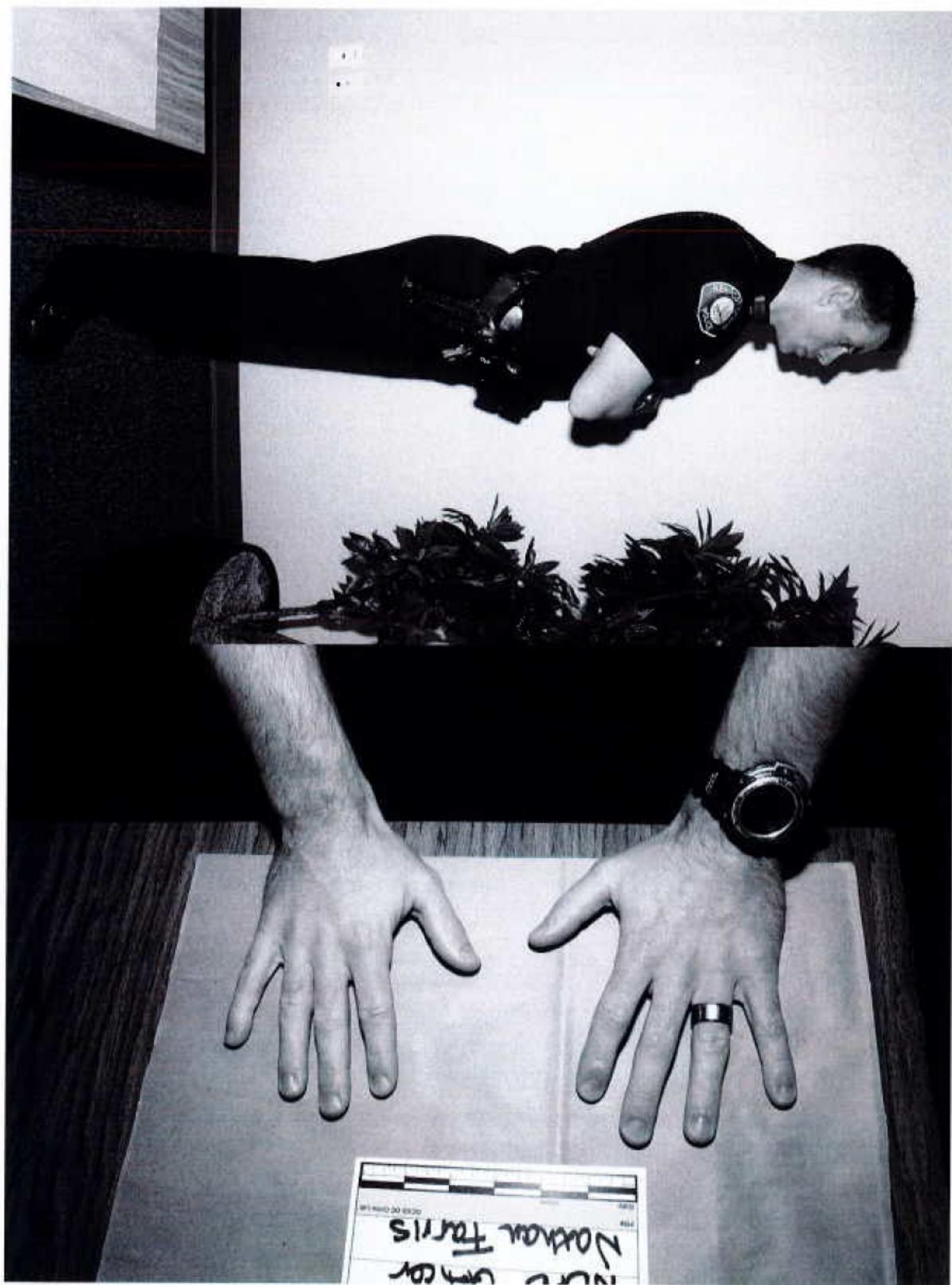
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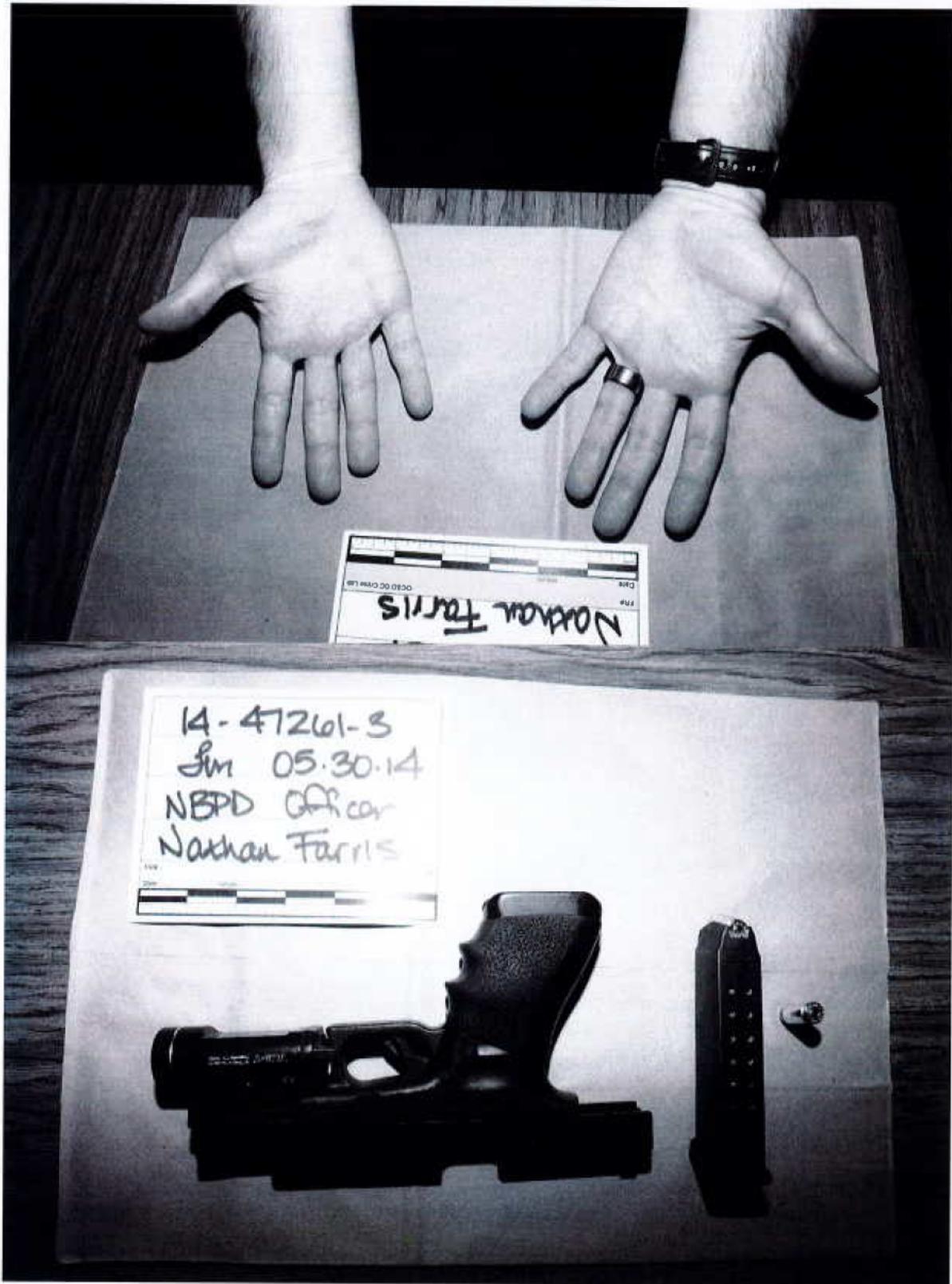
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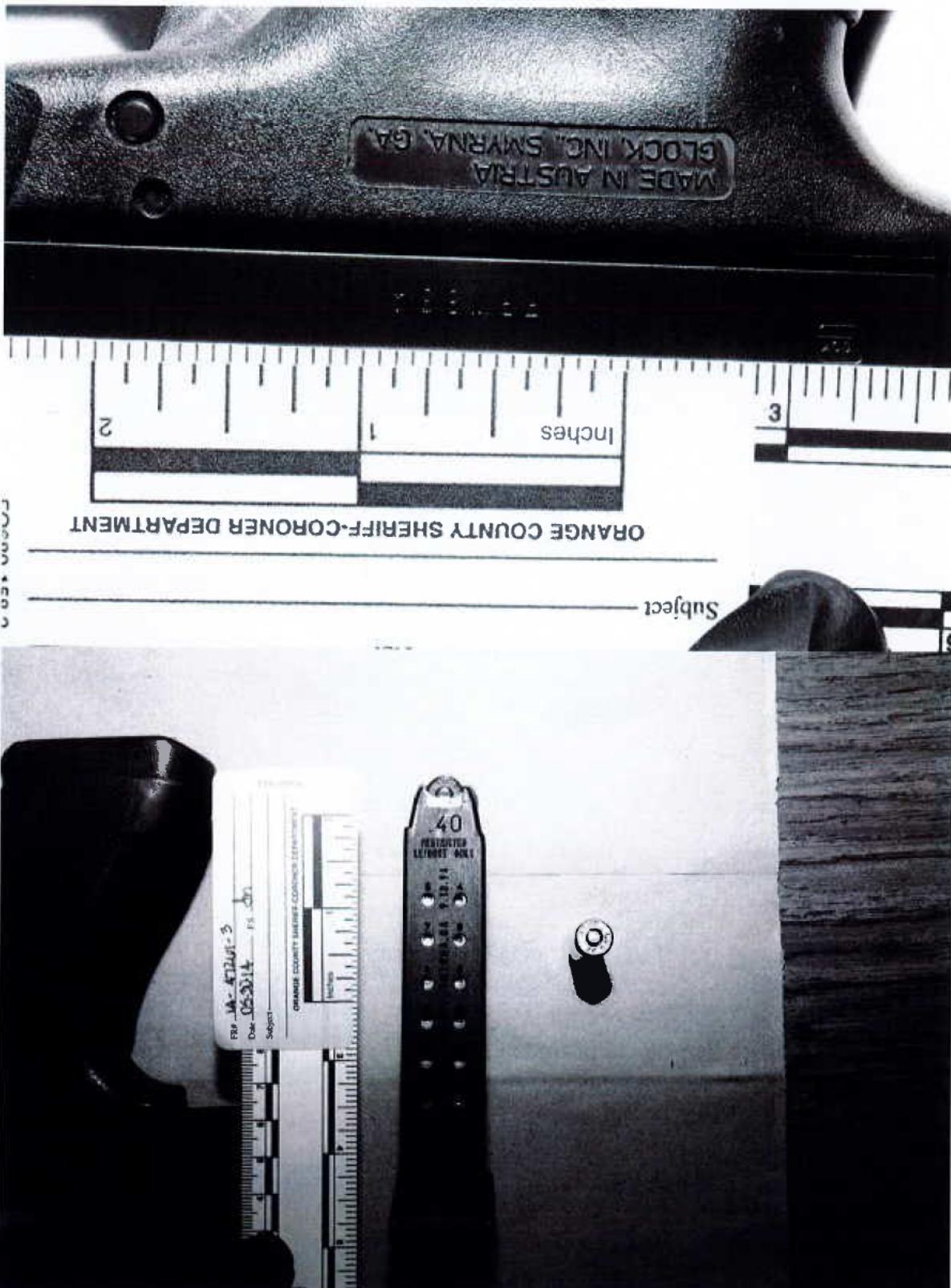
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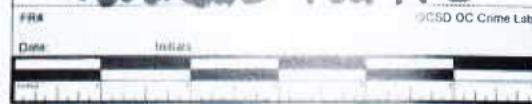
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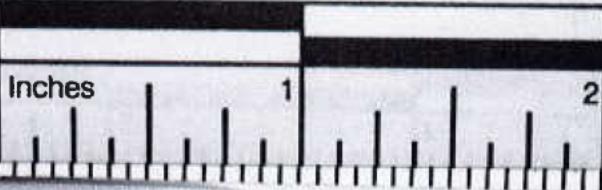
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NBPD Officer  
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NYPD Officer

Andrew Shen

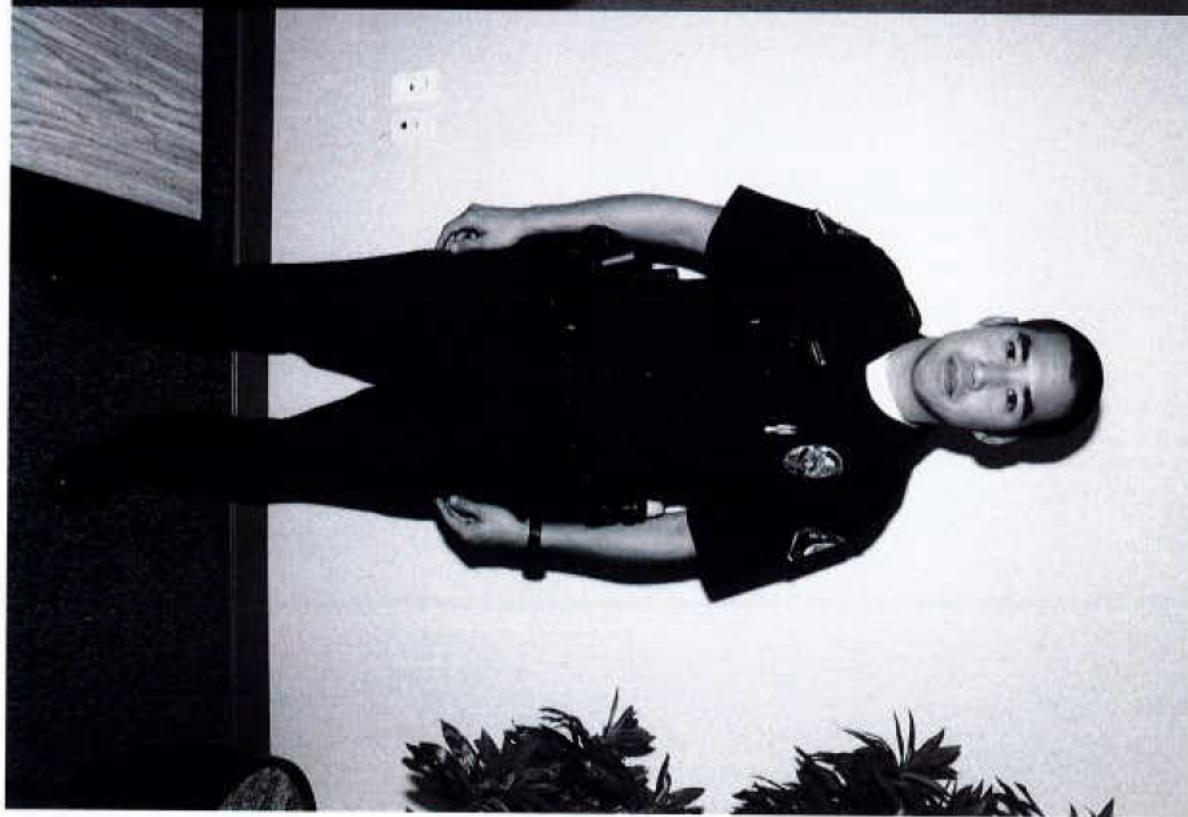
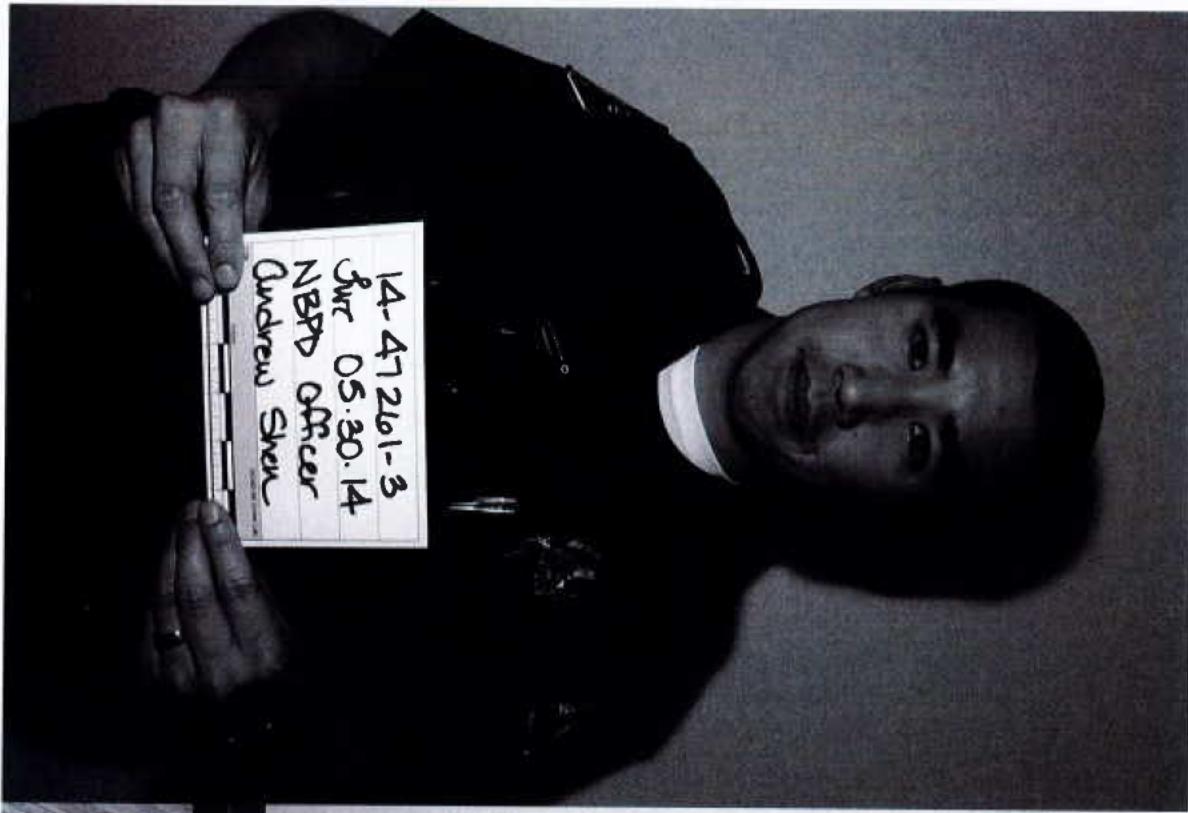
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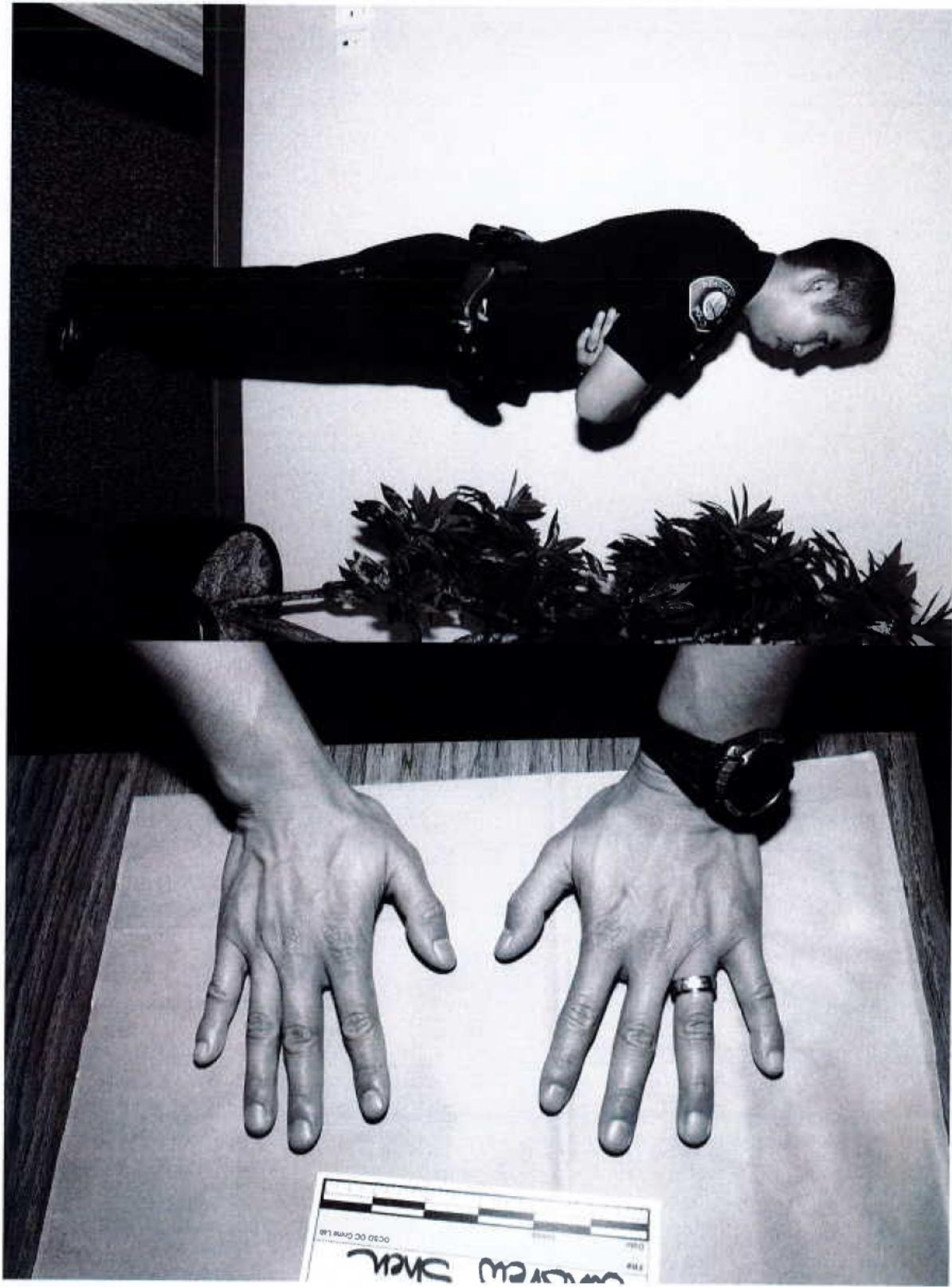
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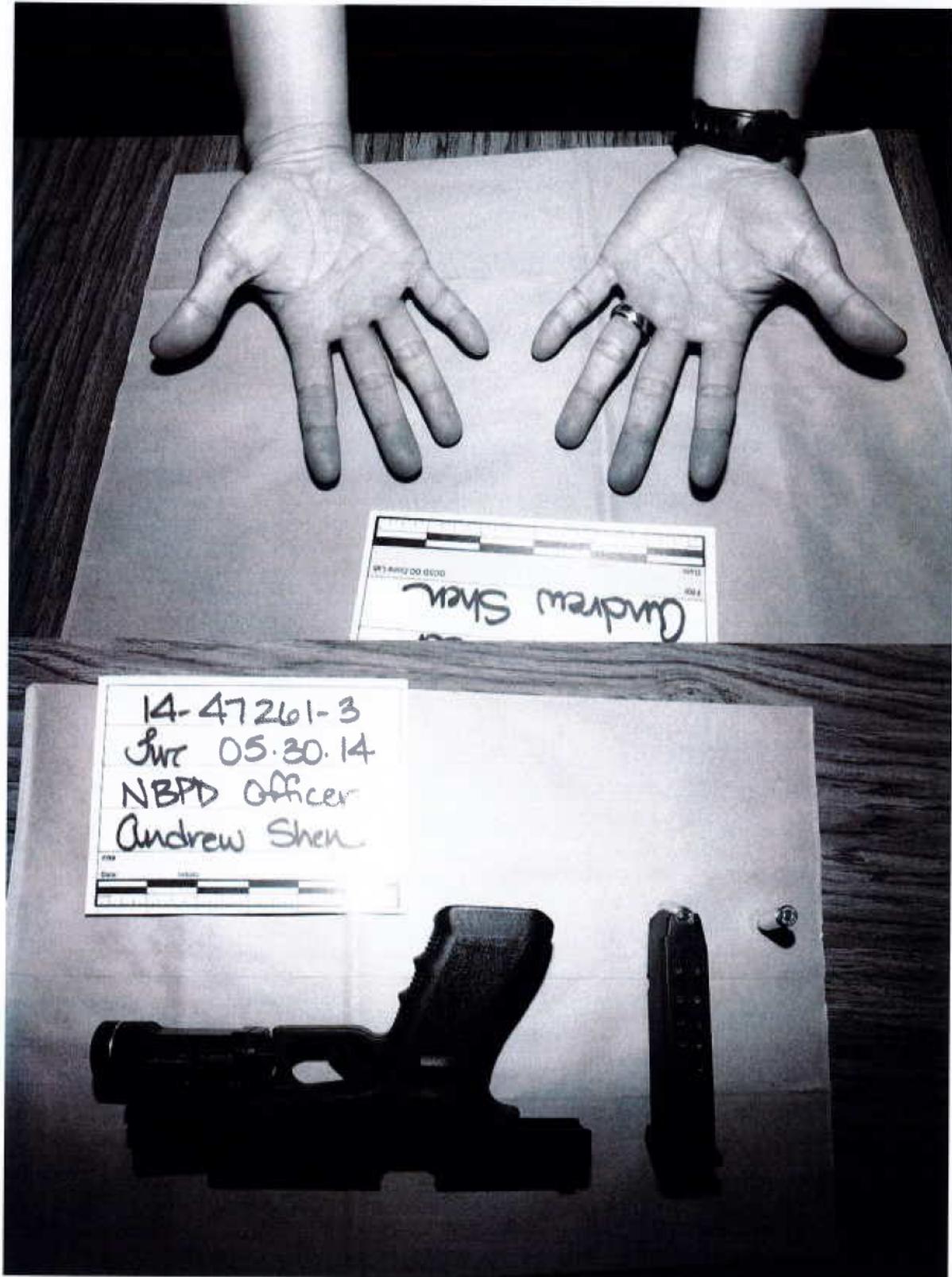
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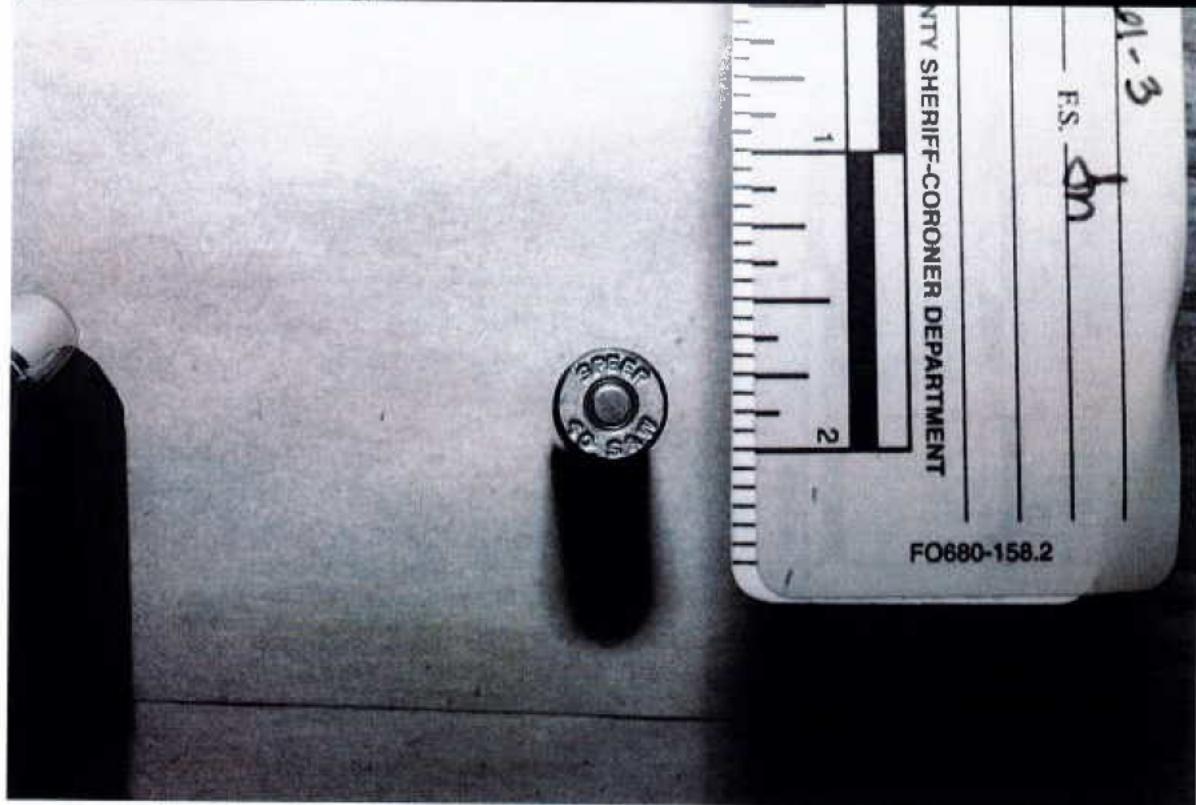
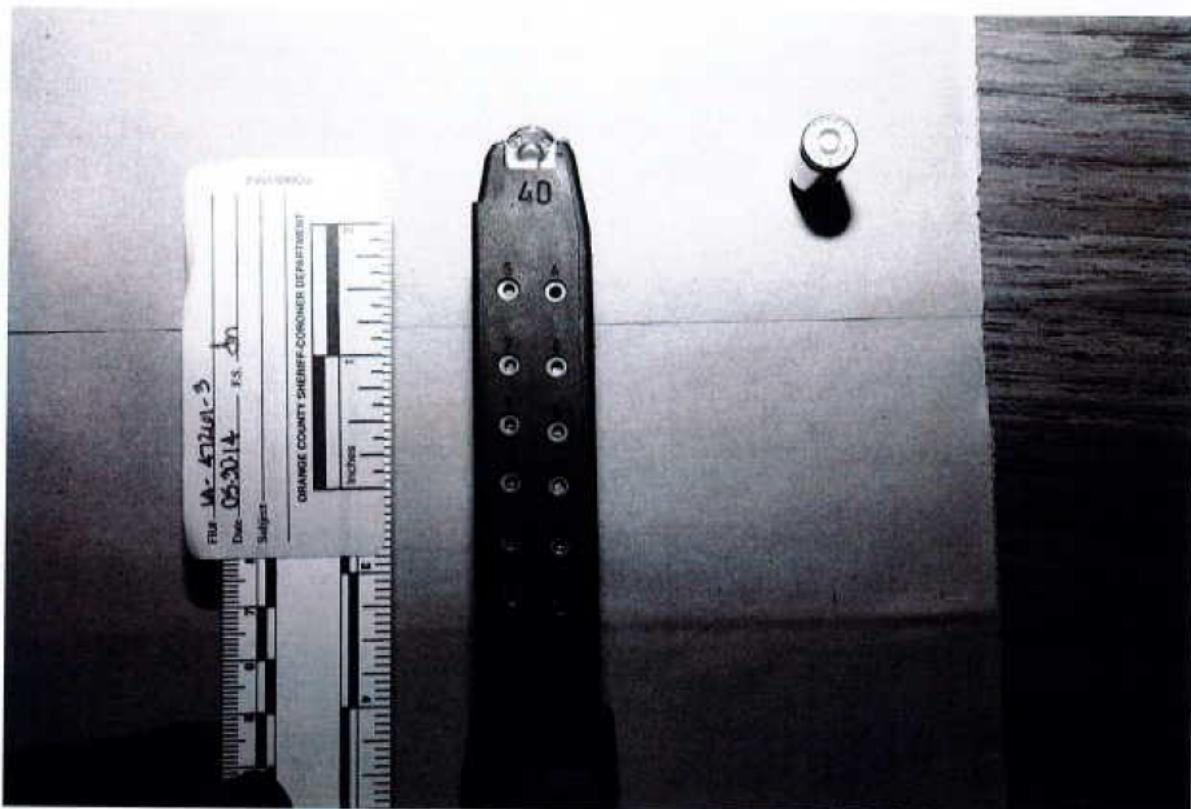
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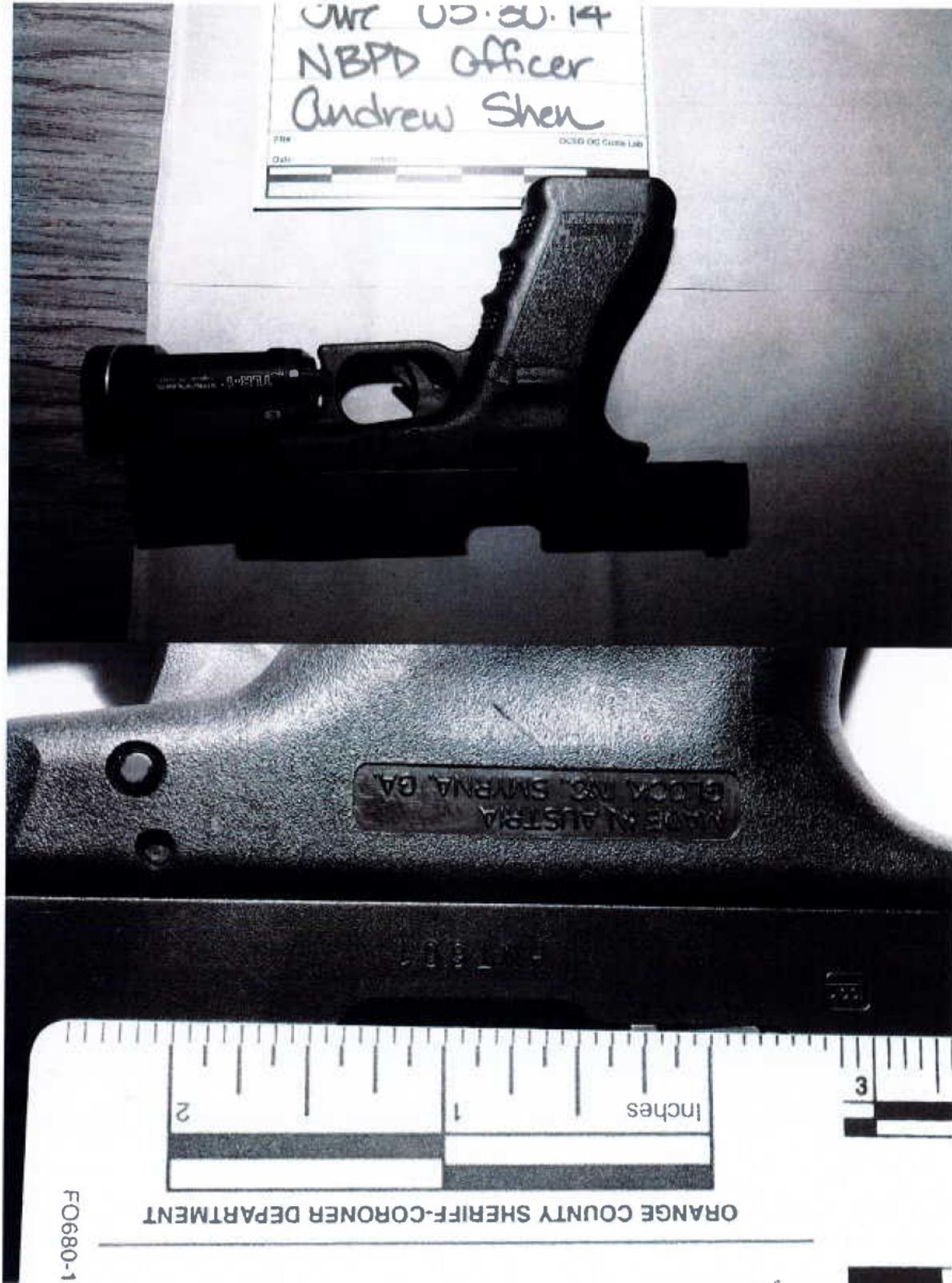
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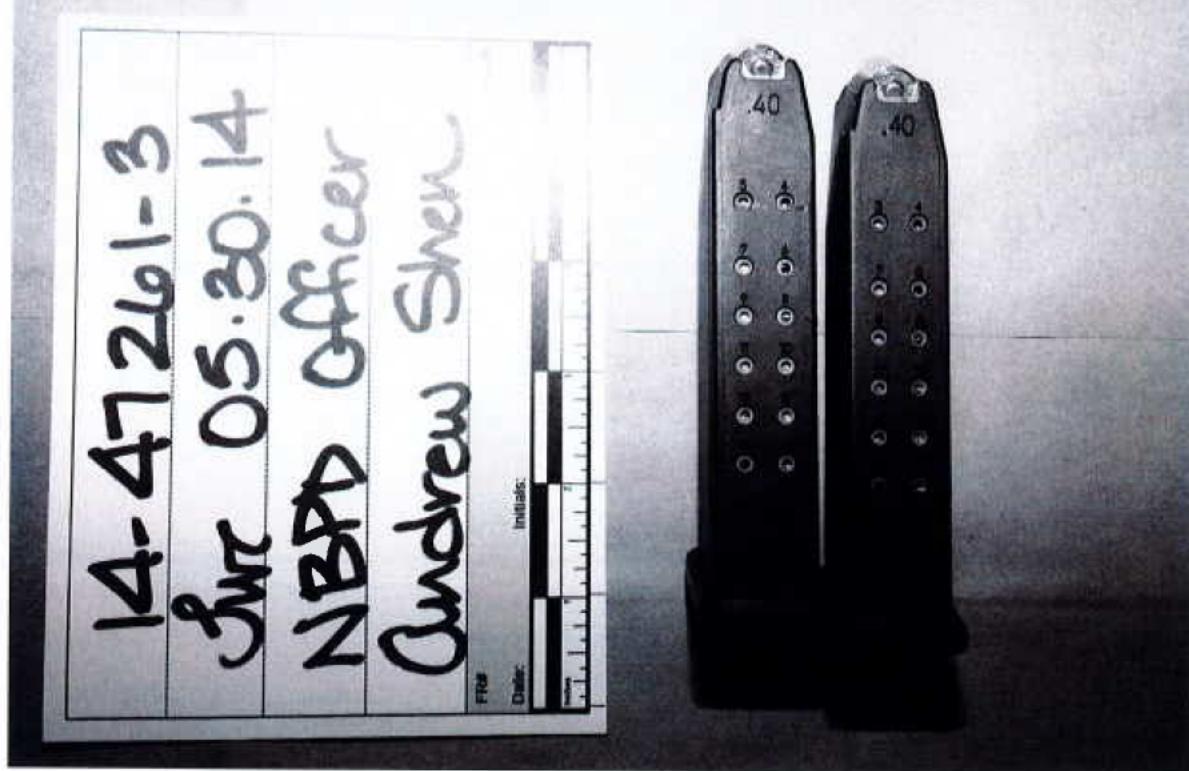
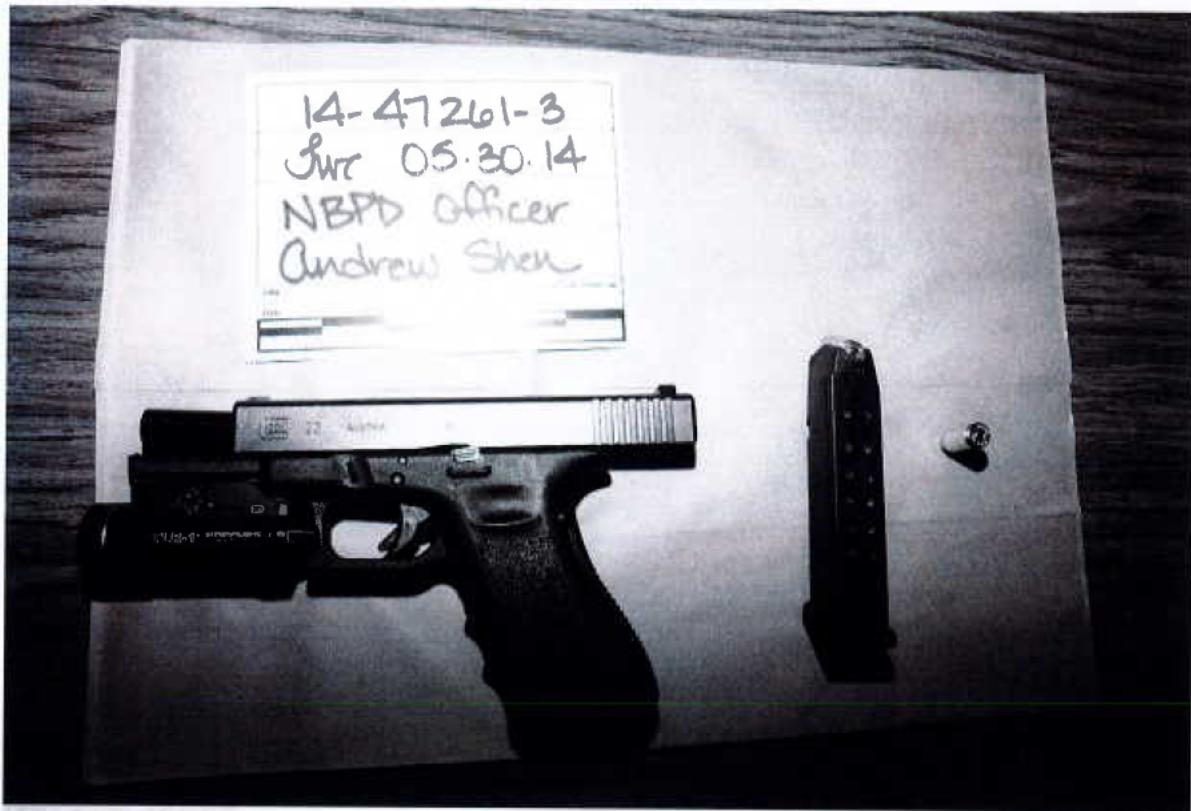
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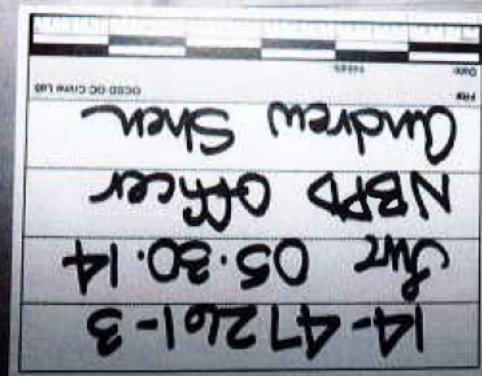


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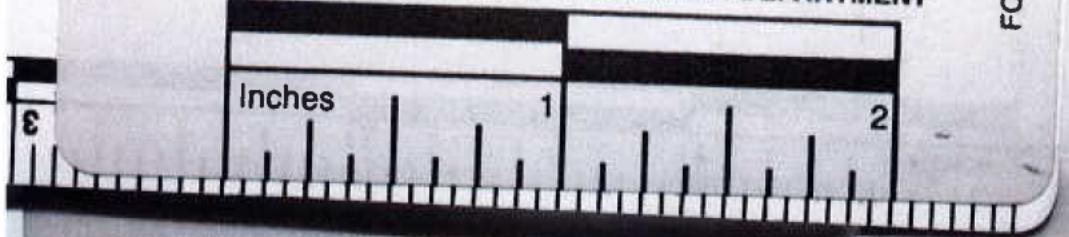


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ORANGE COUNTY SHERIFF-CORONER DEPARTMENT



FO680-15

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## Incident Report Additional Name List

Newport Beach Police Department

OCA: 14003952

Additional Name List

Page 2

Name Code/#      Name (Last, First, Middle)

Victim of  
Crime #      DOB      Age      Race      Sex

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex

## Incident Report Additional Name List

Newport Beach Police Department

OCA: 14003952

Additional Name List

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Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex

**INCIDENT/INVESTIGATION REPORT**

By: WDEPWEG, PSU2 04/09/2015 15:52

Newport Beach Police Department

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Case# 14003952

Status Codes	1 = None	2 = Burned	3 = Counterfeit / Forged	4 = Damaged / Vandalized	5 = Recovered	6 = Seized	7 = Stolen	8 = Unknown
IBR	Status	Quantity	Type Measure	Suspected Type				
D								
R								
U								
G								
S								
Assisting Officers <i>GAGE, D. (1103), FITZGERALD, D. (1291), FITZGERALD, D. (1291), MACK, B. (1210), BUSH, T. (1079), MASLIN, A. (1386), WILSON, T. (1447), LAWTON, R. (958), HOUSTON, D. (1441), JOHNSON, D. (830), MCGILL, D.W. (1404),</i>								
Suspect Hate / Bias Motivated:								

**INCIDENT/INVESTIGATION REPORT**

Newport Beach Police Department

Narr. (cont.) OCA: 14003952

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NARRATIVE

## REPORTING OFFICER NARRATIVE

Newport Beach Police Department

OCA	14003952
Date / Time Reported	Thu 05/29/2014 20:16

Victim

Offense

ASSAULT DEADLY WEAPON - CUTTING

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

On 05/29/14, at approximately 2016 hours, my partner (Officer Preasmyer) and I responded to 1495 Superior Ave., in reference to a disturbance call. Officer Preasmyer and I responded Code 3 (lights and sirens) to the location. While en route, the call updated to an assault with a deadly weapon (245 CPC) when a male subject assaulted an employee with scissors. Officer Kresge arrived on scene and stated that the subject was possibly armed with a handgun.

Upon my arrival, the male suspect had already barricaded himself inside the back office or bathroom of the convenience store. Additional NBPD patrol units arrived on scene and began to set up a perimeter around the 7 Eleven. Officer Preasmyer assigned me to the 40 mm less lethal. We positioned NBPD patrol vehicles facing the front doors of the convenience store and took positions of cover behind the doors of the patrol vehicles.

At approximately 2040 hours, the male suspect came out of the back room and ran towards NBPD officers. As he ran towards us down the center aisle, I observed him holding something in his left hand raising it above his head. At this time, I fired one 40 mm less lethal at the suspect. For additional information regarding the use of force, refer to the District Attorney's report. After the incident, Officer Preasmyer removed the subject's CDL from his back pocket. The subject was later identified by his CDL as Vos, Gerrit.

I spoke to an employee of the 7 Eleven, further identified as victim [REDACTED]. He stated the following: On 05/29/14, between 1930 to 2000 hours, he was on his break, sitting in his vehicle, in the parking lot of the store, facing 15th Street. He observed a male subject ride his skateboard into the store. [REDACTED] heard screaming and a loud noise consistent with an object being thrown inside the store. He saw a male customer run out of the store. He then asked if the customer had been attacked. The customer told him yes and he subsequently called the police.

[REDACTED] then went inside the store behind the counter to call the police. He stated the male subject asked him, "where's the gun?" The male subject then stated "I know you got a gun, just shoot me, shoot me." The male subject then jumped over the counter and grabbed a pair of scissors. The subject had the scissors in his right hand and lunged towards [REDACTED]. He made a hooking motion with the scissors towards him, nearly stabbing him. [REDACTED] fellow employee [REDACTED] grabbed the suspect's arm preventing him from getting stabbed. The suspect left the store briefly, and when he came back, jumped over the counter again. At that point, [REDACTED] stated he and [REDACTED] exited the store.

I spoke to the other employee of the 7 Eleven, further identified as victim [REDACTED]. He stated the following: On 05/29/14, at approximately 2000 hours, he was working behind the store counter assisting a female customer. A male subject, further identified as suspect (Vos) entered the store and grabbed what he thought was a screw driver from the second aisle of the store. The suspect then began to yell expletives at a male customer. The male customer did not respond but appeared to be agitated by the suspect. The male customer subsequently left the store.

At this time, his coworker [REDACTED] entered the store and called the police. The suspect told them "shoot me" while looking out towards the front entrance. [REDACTED] told me he went to the store's back office in fear that the male subject would hurt him. Seconds later, [REDACTED] came out of the office and observed the suspect standing on the employee side of the counter asking for a gun. The suspect then grabbed a pair of scissors and attempted to stab [REDACTED]. [REDACTED] told me he grabbed the suspect's right hand and prevented him from stabbing [REDACTED]. The suspect pulled away and subsequently cut [REDACTED] hand causing an approximate 2 inch laceration to his right palm.

[REDACTED] told me the suspect continued talking to himself and went back to the front of the counter. At this time, he placed his hands over his head and said "shoot me." He then jumped back over the counter, asked "where is the gun?" and started searching the area looking for a gun. At that point, [REDACTED] stated he and [REDACTED] left the store.

## REPORTING OFFICER NARRATIVE

Newport Beach Police Department

OCA

14003952

Victim

Offense

ASSAULT DEADLY WEAPON - CUTTING

Date / Time Reported

Thu 05/29/2014 20:16

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Next, I spoke to victim [REDACTED]. He stated the following. On 05/29/14, at approximately 2000 hours, he entered the store. [REDACTED] observed the male suspect in the store talking "jibberish" to himself and using expletives. The suspect met him at the end of the aisle and attempted to speak to him. [REDACTED] ignored the male suspect.

[REDACTED] observed the suspect chase another male customer in red shorts out of the store. The suspect returned to the store and [REDACTED] subsequently left. [REDACTED] spoke to the male individual in the red shorts. The male customer stated he had already called police. [REDACTED] stayed outside of the store and observed through the glass windows. [REDACTED] watched the suspect pacing back and forth, making hand gestures, and apparently screaming to himself.

Upon seeing him [REDACTED] outside, the suspect came out of the store and chased him with scissors in his hand. [REDACTED] stated at that point, he thought the suspect was going to stab him and he was scared for his life. [REDACTED] stated that he ran to his vehicle with the male subject chasing him. The male suspect told him, "shoot me, I know you have a gun, I saw it in your belt." At this point, [REDACTED] did not respond to him. The suspect then went back into the store.

[REDACTED] returned to his position outside of the store window. He then saw the scissors in the suspect's hand. He observed the suspect get into a physical altercation with the store employees behind the counter. A few seconds later, the employees exited the store.

[REDACTED] told me when the first NBPD officer arrived on scene, he observed the suspect standing behind the counter. The suspect raised his hand and had a blue flannel shirt wrapped around it, pointing and simulating that he had a handgun. The suspect moved out of [REDACTED] view to the back of the store into an office or bathroom.

I observed a bleeding two inch laceration to [REDACTED] right palm.

Due to the use of force against Vos, the District Attorney's office is conducting an investigation. For additional details, refer to the additional reports.

## Incident Report Suspect List

Newport Beach Police Department

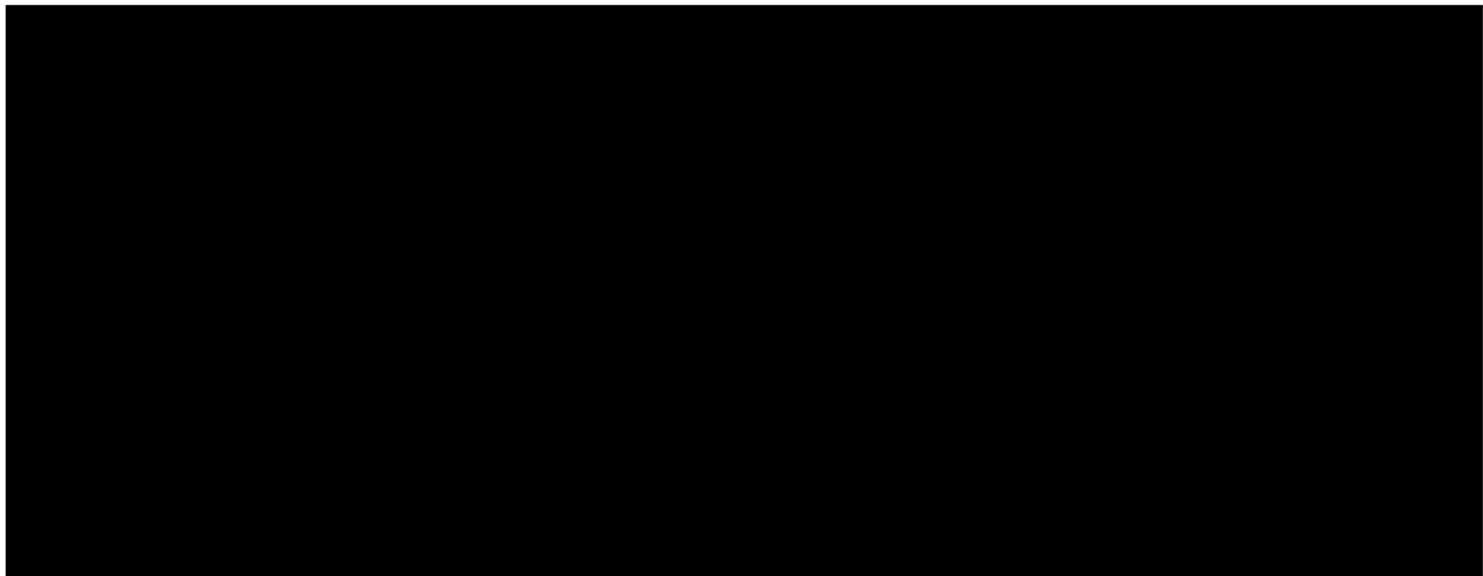
OCA: 14003952

1	Name (Last, First, Middle) VOS, GERRIT DEAN						Also Known As				Home Address [REDACTED]		
	Business Address												
DOB	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State	[REDACTED]		
[REDACTED]	22	O	M	N	508	150	BRO	GRN	OLV	[REDACTED]	[REDACTED]		
Scars, Marks, Tattoos, or other distinguishing features													
Reported Suspect Detail			Suspect Age			Race	Sex	Eth	Height		Weight		SSN
Weapon, Type	Feature	Make	Model				Color		Caliber	Dir of Travel Mode of Travel			
VehYr/Make/Model			Drs	Style	Color		Lic/St			VIN			
Notes						Physical Char							

## Incident Report Related Vehicle List

Newport Beach Police Department

OCA: 14003952



# CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

Newport Beach Police Department

OCA: 14003952

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

**Case Status:** EXCEPTIONALLY CLEARED    **Case Mng Status:** EXCEPTIONALLY CLEARED    **Occurred:** 05/29/2014  
**Offense:** ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** WILSON, T. (1447)

**Date / Time:** 05/29/2014 22:04:54, Thursday

**Supervisor:** CARPENTIERI, P. (1373)

**Supervisor Review Date / Time:** 06/05/2014 22:10:35, Thursday

**Reference:** Supplemental Report

On 05/29/2014 at approximately 2140hrs, partner Ofcr Lawton #958 and I were assigned to patrol with the Newport Beach Police Department. We were in full uniform driving a marked black and white police vehicle. I was on scene for the incident at the 7-11 business located at 1495 Superior Ave. I interviewed a potential witness by the name of [REDACTED] [REDACTED] I activated my audio recording device and the witness provided me with the following statements:

She entered the 7-11 business parking area and parked her [REDACTED] facing EB toward Superior Ave. She exited her vehicle and began to walk toward the front entrance of the store when she observed several unknown persons staring into the store through the front window glass. She inquired what was going on and one unknown male advised her there is a crazy guy inside the store and not to go inside. She stated a second unknown male had the police on the phone and was talking with them. Furthermore, she clearly observed the suspect's face as he was standing in front of the cashiers counter inside the store. She described his facial expression to be very strange as though he was possibly under the influence. She observed the suspect jump over the cashiers counter where the 7-11 employee was. It was evident the suspect was not "right" in the head. Seconds after seeing this, unknown officers arrived on scene and advised her to move away from the parking lot and to a safe location. As a result of this, she walked to an empty parking lot located at the NW corner of 15th St and Superior Ave. During this time, she stated she observed more officers arrive with guns and then she heard a "bunch of shots". She did not specifically see the shooting but heard the shots and asked me whether shots heard were real or rubber bullets.

At approximately 2215hrs, as I was completing this report, I asked the witness a couple follow up questions. I asked the witness to provide a physical description of the suspect as well as his actions while behind the cashiers counter. The witness replied with the following statements:

She described the suspect as a male Hispanic approximately 5'5" with a muscular build. The suspect was also wearing a blue shirt. In addition, she stated the suspect was flailing his arms from side to side in front of the 7-11 employees face.

After completing my follow up questions, I returned to my police vehicle and discovered I had not reactivated my mvs system.

Investigator Signature

Supervisor Signature

# CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

Newport Beach Police Department

OCA: 14003952

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**Case Status:** EXCEPTIONALLY CLEARED    **Case Mng Status:** EXCEPTIONALLY CLEARED    **Occurred:** 05/29/2014  
**Offense:** ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** KRESGE, D. (1046)

**Date / Time:** 05/30/2014 00:37:43, Friday

**Supervisor:** CARPENTIERI, P. (1373)

**Supervisor Review Date / Time:** 06/16/2014 17:57:44, Monday

**Contact:**

**Reference:** Supplemental Report

On 5-29-14, at approx 2017 hours, I was dispatched to 1495 Superior (7-11) reference a disturbance. I arrived at approx 2024 hours. While on scene I spoke with Vict [REDACTED] about the incident. [REDACTED] stated the following.

[REDACTED] said he was a customer inside the store and was the third person standing in line at the cash register. He observed a male subject run S/B past the windows and enter the store. As the entrance door swung open, he heard the subject screaming. The subject then looked over his shoulder as if he was being chased. [REDACTED] stated he never saw anyone actually chasing the subject though. The subject dropped his skateboard near the entrance then ducked down the first aisle. He then stood and "engaged" another male customer with an unknown object in his hand. Because the rack obscured his view he could not describe the subjects actions in detail.

[REDACTED] said he was just an observer until the subject looked over the merchandise rack directly at him and said "that's the mother fucker right there". The subject then runs around the end of the aisle and starts to approach [REDACTED]. [REDACTED] could now see that the subject was holding a screwdriver. He said he was holding it out in front of him and "wielding it like a sword". [REDACTED] said he was in fear of being stabbed by the subject so he dropped his water and three dollars on the floor, then turned and ran out of the store, believing his life was in danger.

He said the subject continued to chase him yelling "cuss words" and "accusations", however he could not state the exact words being used. Once outside the store, [REDACTED] was able to open the distance between himself and the subject. [REDACTED] ran N/B along the storefront then turned W/B around the corner of the building and into the parking lot. The subject stopped at the corner of the building and threw the screwdriver at him. [REDACTED] was not struck by the screwdriver and did not sustain any injuries during the incident.

The subject then turned and ran back inside the store. [REDACTED] said he waited "a matter of seconds" then ran to his car [REDACTED]. He locked himself inside the vehicle and dialed 911. While on the phone with NBPD Dispatch he saw the subject run in and out of the store several times. At one point the subject chased another customer out of the store wielding a pair of scissors, then the subject returned back into the store. It was at this point that police units began arriving on scene.

Investigator Signature

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** LONG, T. (979) **Date / Time:** 05/30/2014 00:41:34, Friday  
**Supervisor:** CARPENTIERI, P. (1373) **Supervisor Review Date / Time:** 06/02/2014 21:38:59, Monday  
**Contact:** **Reference:** Supplemental Report

On 5-29-14 at approximately 2020 hours, I responded to 1495 Superior Ave (7-11) in regards to a man with a screwdriver threatening people. Refer to crime report for details. I contacted Witness [REDACTED] in the parking lot of 7-11 and he related the following information.

stated on 5-29-14 at approximately 2015 hours, he parked his vehicle in the 7-11 parking lot on the east side of the 7-11. When he got out of his vehicle he observed a male wearing a black shirt (Subject #1), chasing another male (Subject #2) around the parking lot. Subject #2 was described as a male white, 6-1 to 6-2, with brown hair, wearing a white shirt and white pants. Subject #1 had a brown paper sack in his hand approximately the size that would hold a beer can. Subject #1 yelled "can you feel me" at Subject #2 5 or 6 times. Subject #1 stopped chasing Subject #2 and stood in front of the 7-11 front doors. Subject #1 looked up at the police helicopter and yelled at the helicopter "can you feel me." Subject #1 did this for about 30 seconds and then he went inside the 7-11. This was the last time [REDACTED] saw Subject #1. Witness [REDACTED] stated he has never seen the Subject #1 or Subject #2 before. Witnesses [REDACTED] stated he believed that Subject #2 was related to the [REDACTED] that was parked in the 7-11 parking lot. Witness [REDACTED] stated he got back into his vehicle and drove home.

Witness [REDACTED] stated he did not see the shooting, just heard the gun shots. Witness [REDACTED] stated at the time of the shooting he was standing on the south west corner of Placentia Ave and 15th Street.

There were 5 vehicles in the 7-11 parking lot at the time of the shooting. There were 3 vehicles parked on the north side of the building: [REDACTED]

There were 2 vehicles parked in the parking lot on the east side of 7-11. (1)

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Investigator Signature

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** *DE LA TORRE, A. (1327)*

Date / Time: 05/30/2014 02:27:20, Friday

**Supervisor:** CARPENTIERI, P. (1373)

**Supervisor Review Date / Time:** 06/02/2014 21:53:06, Monday

### Contact:

**Reference:** *Supplemental Report*

On 5/29/2014, at approximately 2058 hours, I was working uniformed patrol in a marked black and white police vehicle when I received a radio call to assist with Spanish translation at the scene of an OIS at Placentia and 15th St.

Upon my arrival I made contact with witness [REDACTED] I was advised that she observed the incident and she needed to be interviewed.

I spoke to witness [REDACTED] in Spanish. I asked her what happened inside the store. [REDACTED] told me that she was inside the 711 paying for her things when a male ran inside as if someone was chasing him. The male ran in and grabbed an item from a shelf. She believed the item could have been scissors, but she was unsure. The male then ran out of the store. [REDACTED] was reluctant to leave the store because the male was outside and she was scared of him and his actions inside the store.

Approximately one minute after the male ran out, he ran back inside. He went to the rear of the store (refrigerated drinks area). At that point, she felt that she should leave the store. She quickly exited the store and went and stood near the RedBox machine and a few other people. A minute after that, she observed an unknown male (possibly a patron) run out of the store. The same man from earlier was chasing after him. She does not recall if the man chasing had anything in his hand.

The man chasing then went back in to the store. Then, a short time after, the two employees exited the store and advised her and the group that the man was in the office.

█████ remained outside until police arrived.

■ advised me that she had to leave after the interview because she needed to go back home to care for her child.

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Investigator Signature

**Supervisor Signature**

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** MAISANO, D. (1324)

Date / Time: 05/30/2014 03:34:53, Friday

**Supervisor:** CARPENTIERI, P. (1373)

Supervisor Review Date / Time: 06/04/2014 20:19:42, Wednesday

**Contact:**

**Reference:** *Supplemental Report*

On 05-29-2014 at approximately 2052 hrs I was working unformed patrol in an all black unmarked police vehicle for the City of Newport Beach, in the County of Orange. I responded to 1495 Superior Ave to assist with an assault with a deadly weapon radio call.

While at the scene I was requested to collect a piece of evidence, which was used during the course of the crime. The item, a yellow and black handled, multi-bit screwdriver, with no bit attached. The screw driver was located in the north west corner of the parking lot.

I took custody of the screw driver which was subsequently booked into NBPD as evidence.

It should also be noted I booked Ofc. R. Henry's JFAK kit which was used at the scene of this incident.

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Investigator Signature

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Supervisor Signature

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** *MASLIN, A. (1386)*

Date / Time: 05/31/2014 04:43:32, Saturday

**Supervisor:** CARPENTIERI, P. (1373)

Supervisor Review Date / Time: 06/04/2014 20:20:52 Wednesday

**Contact:**

**Reference:** *Supplemental Report*

On 05/29/14 at approximately 2042 I responded to the 7-11 at 1495 Superior Ave. reference a radio call of an assault with a deadly weapon. Numerous NBPD units were already on scene as I arrived. As I exited my vehicle which was parked on the WCL of Superior north east of the 7-11 I heard several gunshots coming from the entrance of the 7-11. I immediately escorted two subjects who were standing on the sidewalk away from the 7-11 for their protection. Following the officer involved shooting I was stationed at the northwest corner of Superior / Placentia to prevent pedestrian traffic from entering the crime scene. At approximately 2149 hours I was dispatched to Western Medical Center in Santa Ana to assist Ofc. Houston. When I arrived on scene Subj. Vos was being treated in Operating Room #7 and I was directed to the waiting room where I waited with Ofc. Houston while Subj. Vos was treated for his injuries. While waiting with Ofc. Houston I obtained Subj. Vos's shoes and watch from hospital staff which I later turned over to the representative from the OC Crime Lab. I remained at the hospital until hospital staff informed us that Subj. Vos had died due to his injuries. See Ofc. Houston's Supplemental Report for further details regarding the time of death and treating doctors. I was present during the OCSD Coroner and District Attorney's investigation during which time they inspected and photographed Subj. Vos's body. After the completion of their investigation I transported Ofc. Houston back to his vehicle at the 7-11 at approximately 0135 hours on 05/30/14.

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**Investigator Signature**

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** HOUSTON, D. (1441) **Date / Time:** 05/31/2014 11:17:01, Saturday  
**Supervisor:** CARPENTIERI, P. (1373) **Supervisor Review Date / Time:** 06/02/2014 21:36:58, Monday  
**Contact:** *Vos, Gerrit Dean* **Reference:** *Supplemental Report*  
*12 San Bonifacio, Rancho Santa*  
*Margari*

On 05/29/2014, at approximately 2028 hours, I (Officer Houston #1441) responded to 1495 Superior Ave. to assist with a barricaded suspect.

I arrived on scene at approximately 2033 hours and was directed to cover the west (rear) door of the 7-Eleven in case the suspect attempted to flee. While covering the rear west door, at approximately 2043 hours, an officer involved shooting occurred. I ran to the from my cover position to the main east entrance of the 7-Eleven. I observed several officers with their firearms drawn and in the low ready position. I observed the male suspect (Vos, Gerrit) lying on the ground in between the officers and the main entrance. Officers Preasmyer and Gilbert approached Vos and took him into custody.

Newport Beach Fire Department personnel (NBEngine 62 and NBMedic 62) arrived, placed Vos onto their gurney and began treating him as they loaded him into their emergency vehicle. I followed the Newport Beach Fire Department personnel into the emergency vehicle where treatment continued while Vos was transported to Western Medical Center (Santa Ana). Listed below are the involved Newport Beach Fire Department personnel:

Captain Roman Taijeron  
Firefighter Paramedic Adam Schwegman  
Firefighter Adam Davenport  
Firefighter Drew Kaford  
Firefighter JC Nessa

While at Western Medical Center Vos was treated by (MD Frank Nastanski). Vos, by the order of MD Nastanski, was then transported to Operating Room #7 for surgical treatment. MD Nastanski pronounced Vos dead at 2218 hours.

Based on my observations Vos suffered from gunshot wounds to the right chest, left upper chest, groin, and left upper thigh. Vos was unresponsive during my contact with him and made no statements.

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**Investigator Signature**

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

Printed: 04/09/2015 15:52

*Newport Beach Police Department*

OCA: 14003952

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Case Status: *EXCEPTIONALLY CLEARED* Case Mng Status: *EXCEPTIONALLY CLEARED* Occurred: *05/29/2014*  
Offense: *ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT*

**Investigator:** CARPENTIERI, P. (1373)

Date / Time: 06/02/2014 18:56:55, Monday

**Supervisor:** RASMUSSEN, S. (1218)

Supervisor Review Date / Time: 06/05/2014 22:45:00, Thursday

**Contact:**

**Reference:** *Supplemental Report*

On 5/29/2014, I was assigned as a field supervisor with my partner, Sgt. Rasmussen, working uniformed patrol in the city of Newport Beach. At 2016 hours, NBPD received a 911 call for service reference a disturbance at a 7-Eleven convenience store located at 1495 Superior Avenue. As officers responded and arrived on scene, the call escalated into an assault with a deadly weapon. I responded Code 3 to the location to assist and when I arrived on scene the suspect, later identified as Vos, had barricaded himself inside a room at the location. Victims and witnesses had fled the 7-Eleven interior and a perimeter around the store was established. Officers positioned themselves near the 7-Eleven main entrance and deployed less lethal and lethal cover. While pedestrians were evacuated from the immediate area and vehicular traffic was restricted from traveling nearby, officers moved marked NBPD patrol units near the front entrance for cover and braced the 7-Eleven front doors open with wood.

I was informed at the scene that Vos, from the interior of the store, could potentially access a rear door (facing south onto Placentia Avenue) and a hatch leading to the roof. Sgt. Rasmussen and I went to the rear of the location to assess the perimeter and containment of the suspect. While standing near the southwest corner of the parking lot towards the rear of the 7-Eleven, I heard numerous gunshots coming from the area of the front entrance. I returned to that location and observed Vos on the ground in front of the 7-Eleven front doors. An arrest team was formed to take Vos into custody which occurred without further incident. I then assisted with clearing the interior of the 7-Eleven along with Ofcr. Long, Ofcr. Bush and Sgt. R. Johnson.

Due to the officer involved shooting incident, a command post was established on 15th Street adjacent to the parking lot of the 7-Eleven. I assisted with managing the crime scene and the investigation that followed. Costa Mesa Police Ofcer. J. Johnson and Ofcer. M. Johnson assisted with the preparation of a crime scene log for the incident. When the investigation of the crime scene was complete, Ofcer. M. Johnson provided me with the two-page log which I later booked into NBPD Property as evidence.

Refer to the related Incident, Supplemental and Detective Follow-Up Reports for further details.

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**Investigator Signature**

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

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*Newport Beach Police Department*

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** KIMBLE, C. (1299) **Date / Time:** 06/03/2014 06:10:12, Tuesday  
**Supervisor:** BURDETTE, S. (1023) **Supervisor Review Date / Time:** 06/05/2014 13:50:34, Thursday  
**Contact:** **Reference:** Detective Follow-up

On 5/30/14 at about 1000 hours, Det Sgt Burdette and I met with DA Investigator Andersen at [REDACTED] in order to deliver notification of death to the family of Gerrit Vos.

Investigator Andersen made contact with Vos' step-father, [REDACTED] at the location. During the contact, [REDACTED] informed us that Vos suffered from Schizophrenia and Bi-Polar and was currently taking the medication "Latuda." [REDACTED] also revealed that Vos was a methamphetamine user and stated Vos had "injected crystal meth" in the past. For these reasons, Vos was no longer allowed to live at the location.

Refer to DA Investigator Andersen's report for further information, case number SA14-008.

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Investigator Signature

**Supervisor Signature**

## CASE SUPPLEMENTAL REPORT

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** MONARCH, T. (1052) **Date / Time:** 06/04/2014 16:33:53, Wednesday  
**Supervisor:** JONES, D. (992) **Supervisor Review Date / Time:** 06/09/2014 16:52:30, Monday  
**Contact:** **Reference:** Detective Follow-up

On 05/29/14, at approximately 2355 hours, I responded to 1495 Superior (7 Eleven Store), in reference to an officer involved shooting. I was teamed up with Orange County DA Investigator Bradley. Investigator Bradley was assigned to supervise the processing of the scene and evidence collection.

We met Lindsey Olson (Forensic Specialist) and Richard Patron (Forensic Scientist) of the Orange County Crime Lab. We monitored them while they identified evidence related to the shooting.

While searching the parking lot, we located a multi-bit screwdriver with a yellow and black handle. It did not have a bit attached. It was on the ground in the N/W corner of the parking lot. Investigation revealed the screwdriver may be related to an assault with a deadly weapon that occurred prior to the shooting. NBPD Officer Maisano responded to the scene to take possession and book the screwdriver into property. See NBPD incident and supplemental reports (same DR) for details.

Investigator Bradley and I monitored the members of the Orange County Crime Lab while they located and collected multiple items of potential evidence. They additionally took 186 digital photos of the scene. See OCSD Forensic Report (#14-47261) for details.

Investigator Bradley located the store's surveillance video system. The store manager [REDACTED] responded to the scene to assist Bradley. [REDACTED] proceeded to download a copy of the surveillance video to a DVD. Investigator Bradley subsequently took possession of the DVD. See District Attorney Supplemental Scene Report (SA-14-008) for details.

On 05/30/14, at approximately 0620 hours, the OC Crime Lab personnel, Investigator Bradley and I cleared the scene. It was released to the NBPD Patrol.

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**Investigator Signature**

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Supervisor Signature

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*Newport Beach Police Department*

OCA: 14003952

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Case Status: EXCEPTIONALLY CLEARED Case Mng Status: EXCEPTIONALLY CLEARED Occurred: 05/29/2014  
Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** FREEMAN, H. P. (1166) **Date / Time:** 06/06/2014 12:52:26, Friday  
**Supervisor:** JONES, D. (992) **Supervisor Review Date / Time:** 06/09/2014 16:52:47, Monday  
**Contact:** **Reference:** Detective Follow-up

#### CASE SUMMARY:

This is a follow-up report reference a 245 PC (assault with a deadly weapon) investigation and subsequent officer involved shooting that occurred at 7 Eleven (1495 Superior Ave., Newport Beach, CA) on 5-29-2014.

## INTERVIEWS AND INVESTIGATION:

On 5-30-2014 at approximately 0130 hours, I was assigned to accompany Orange County District Attorney Investigator Domingo Cabrerra to interview a witness regarding the aforementioned incident. We arrived at the witness's residence at approximately 0140 hours. Investigator Cabrerra began the digitally recorded interview at approximately 0145 hours and the interview was completed at approximately 0207 hours. The interview was conducted in Spanish and therefore, I did not understand the majority of Investigator Cabrerra's questions or the witness's answers.

After the interview was complete, Investigator Cabrerra summarized the witness's statement as follows. The witness was inside 7 Eleven purchasing lottery tickets when a male subject (described as a M/W, 23 - 25 years old) ran into the store. It appeared that someone was chasing him based on his actions; however no one was actually chasing him. The male subject was holding what appeared to be scissors in his hand when he entered. The male subject walked over to a display rack and took something from the rack. Shortly thereafter, another male patron entered the store and the first male subject began stabbing at the second male with the scissors while yelling at him. The witness did not know what the subject was yelling, as she speaks only Spanish. The clerk advised the witness to leave the store for her safety and she complied. As the victim was walking back to her home (located approximately  $\frac{1}{4}$  mile from the incident location), she heard gun shots; however did not see who fired the shots.

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Investigator Signature

**Supervisor Signature**

## CASE SUPPLEMENTAL REPORT

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Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** PERKINS, J. (1319)

**Date / Time:** 06/10/2014 12:32:41, Tuesday

**Supervisor:** FREEMAN, C. (725)

Supervisor Review Date / Time: 06/12/2014 14:29:29, Thursday

**Contact:**

**Reference:** *Detective Follow-up*

On 5-30-2014 at 0040 hours, I was conducting a canvas of the neighborhood with address on Bolero in the City of Newport Beach. These address are directly across the street from 1495 Superior, Newport Beach, County of Orange, California. I was completing the canvas along with Orange County District Attorney's office Investigator Domingo Cabrera.

We made contact with a male resident, [REDACTED] The interview began at 0040 hours on 5-30-2014 and Investigator Cabrera asked the questions of [REDACTED] related the following: He was sitting in his living room at approximately 9:00 pm when he heard what sounded like 6-10 gun shots. He described the sound as, "Sounded like fire crackers." He said he has never heard gunshots before, however, they sounded like shots. A very short time later he heard the sounds of sirens and said almost immediately he could see red flashing lights through the windows of his residence. He also heard the sounds of a helicopter. He said the windows to his residence were all closed at the time he heard what he described as gunshots. When asked, he could not say how many actual weapons fired shots. He said within 15 minutes the entire area was taped off preventing people from entering the area of 7-11. At this point the interview was terminated at 0046 hours on 5-30-2014.

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**Investigator Signature**

Supervisor Signature

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Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** COMTE, J. (1300)

Date / Time: 06/10/2014 12:39:26, Tuesday

**Supervisor:** FREEMAN, C. (725)

Supervisor Review Date / Time: 06/27/2014 17:02:56, Friday

**Contact:**

**Reference:** *Supplemental Report*

On 5/30/14 at approximately 0035 hours, I accompanied OCDA Investigator Ed Wood on a canvas off the neighborhood in an attempt to locate any witnesses for the 245 PC/ Assault with a Deadly Weapon, that had occurred at the 7-11 at Superior/ Placentia.

We checked address [REDACTED] but no one came to the door and no lights were on in the residences. We were able to contact [REDACTED] [REDACTED] stated that he saw a "lot of activity" at the 7-11 and stated that this was around 6:30. [REDACTED] stated that he heard what sounded like a "bunch of caps." [REDACTED] stated that he thought it sounded like gunshots but his son stated that it was caps. [REDACTED] told us that he was standing on his front porch which is approximately 150-200 feet away from the 7-11. When asked if he could see what was going on, he stated that he was unable to see "the guy" because there were so many cops. [REDACTED] stated that he heard "get down" before he heard the pops.

stated that there were a lot of "random" people standing around on the street. He told us that he had spoken to a couple who had gone to the 7-11 to rent a movie (there is RedBox movie rental in front of 7-11). [REDACTED] stated that this couple told him that a subject inside the 7-11 had scissors and was jumping around. He stated that they told him they were not sure if he had a gun or not but had a bag. I asked [REDACTED] what first got his attention and made him come outside. He stated that there were a lot of people already outside including police and firetrucks. [REDACTED] stated that his wife was outside with him so he had her come speak to us as well.

We next spoke with [REDACTED]. She stated that she did not see or hear anything. She stated that she heard someone yell "get back". [REDACTED] also stated that she heard the police yell to "get back" and "put it down" before they started firing.

Please see OCDA Inv. Woods report for further on this interview.

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**Investigator Signature**

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Supervisor Signature

## CASE SUPPLEMENTAL REPORT

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**Offense:** ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** PERKINS, J. (1319) **Date / Time:** 06/10/2014 12:56:36, Tuesday  
**Supervisor:** KRALLMAN, K. (1198) **Supervisor Review Date / Time:** 06/10/2014 15:39:47, Tuesday  
**Contact:** **Reference:** Detective Follow-up

On 5-30-2014 at 0254 hours, I sat in an interview conducted by OCDA Investigator Cabrera of Witness Officer M. Fletcher #1297. Investigator Cabrera digitally recorded the interview. Refer to the OSDA's full report for full details of the interview with Ofc Fletcher #1297.

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**Investigator Signature**

Supervisor Signature

# CASE SUPPLEMENTAL REPORT

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OCA: **14003952**

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**Case Status:** *EXCEPTIONALLY CLEARED*    **Case Mng Status:** *EXCEPTIONALLY CLEARED*    **Occurred:** *05/29/2014*

**Offense:** *ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT*

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**Investigator:** *COMTE, J. (1300)*

**Date / Time:** *06/10/2014 13:18:05, Tuesday*

**Supervisor:** *JONES, D. (992)*

**Supervisor Review Date / Time:** *06/24/2014 10:37:32, Tuesday*

**Contact:**

**Reference:** *Supplemental Report*

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On 5/30/14 at approximately 0240 hours, I sat in on an interview with Ofc. Todd Bush led by OCDA Inv. Ed Wood. The interview was digitally recorded by Inv. Wood. Please refer to his notes for further.

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Investigator Signature

Supervisor Signature

# CASE SUPPLEMENTAL REPORT

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**Offense:** *ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT*

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**Investigator:** *COMTE, J. (1300)*

**Date / Time:** *06/10/2014 13:21:34, Tuesday*

**Supervisor:** *FREEMAN, C. (725)*

**Supervisor Review Date / Time:** *06/27/2014 17:03:06, Friday*

**Contact:**

**Reference:** *Supplemental Report*

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On 5/30/14 at approximately 0337 hours, I sat in on an interview of Ofc. T. Long led by Inv. Ed Wood. The interview was digitally recorded by Inv. Wood. Please refer to his notes for further.

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Investigator Signature

Supervisor Signature

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Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** SHEN, A. (1432) **Date / Time:** 06/12/2014 20:00:04, Thursday  
**Supervisor:** FREEMAN, H. P. (1166) **Supervisor Review Date / Time:** 06/15/2014 02:42:08, Sunday  
**Contact:** **Reference:** Supplemental Report

The purpose of this supplemental is clarify which officers were in the direct path of Vos, Gerrit Dean 06/15/91 as he ran out of the 7-Eleven with a sharp metal object raised above his head. Officers Fletcher, Officer Kresge, Officer Shen, Officer Preasmyer, and Sergeant Johnson, were in the direct path of Vos and as such they were the victims of PC 245(c).

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Investigator Signature

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

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Offense: ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT

**Investigator:** MOROUSE, J. (1412) **Date / Time:** 02/23/2015 15:29:07, Monday  
**Supervisor:** PETERS, R. (1271) **Supervisor Review Date / Time:** 02/24/2015 12:34:20, Tuesday  
**Contact:** **Reference:** Detective Follow-up

On Thursday, May 29, 2014, at approximately 2130 hours, I was contacted by NBPD Sergeant Krallman who advised me that there had been an officer-involved shooting involving NBPD officers which occurred at the 7-Eleven store located at 1495 Superior Ave., Newport Beach. Sgt. Krallman requested that I respond to the scene to assist with the investigation.

Upon my arrival at the scene, I attended an incident briefing which was led by NBPD Lt. Jon Lewis. During the briefing I learned that NBPD officers had been dispatched to the 7-Eleven in regards to an "Assault with a Deadly Weapon" call. NBPD officers arrived at the scene and learned that the suspect, Gerrit Vos, had attempted to stab the store employees and other customers with scissors and a screwdriver.

After securing the perimeter of the business, NBPD officers positioned themselves directly in front of the entrance/exit of the 7-Eleven while using two police SUV's for cover. Vos emerged from the rear office of the store and charged at the officers with his arm raised above his head while holding a shiny object in his hand. The metal object was later determined to be a piece of metal shelving material. I learned that NBPD Officers Henry and Farris had fired their patrol rifles at Vos and that NBPD Officer Shen had fired a 40mm less-lethal projectile at Vos. The suspect, Gerrit Vos, had already been transported from the scene to Western Medical Center (Santa Ana) and that he had passed away as a result of his gunshot wounds.

Investigators from the Orange County District Attorney's Office-Special Assignments Unit also responded to the scene to investigate the use of force by the involved NBPD personnel. I was assigned to assist OCDA Investigator Dean Fulcher. Members of the Orange County Crime Lab and the Orange County Coroner's Office also assisted in the investigation. The following case numbers are associated with the investigation/evidence collection for the other involved agencies:

- OCDA Special Assignments Unit SA 14-008
- Orange County Crime Lab 14-47261
- Orange County Sheriff-Coroner 14-02157-MR
- Newport Beach Fire Department N14-04364

During the course of the investigation, I was present with OCDA Investigators Fulcher and Andersen during their respective interviews with NBPD Officer Henry, NBPD Officer Farris, NBPD Officer Shen, NBPD Sergeant Johnson, NBFD Paramedic J.C. Nessa, Trauma Nurse Jennifer Robles, and [REDACTED] Additional NBPD detectives were assigned to partner with the other investigators from the Special Assignments Unit to assist with the investigation.

On 6-5-2014, Sgt. Krallman provided me with Gerrit Vos' California Driver License which had been collected from his person on the night of 5-29-2014. I booked the CDL into evidence at NBPD.

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**Investigator Signature**

Supervisor Signature

## CASE SUPPLEMENTAL REPORT

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Newport Beach Police Department

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**Offense:** *ASSAULT DEADLY WEAPON - CUTTING INSTRUMENT*

On 7-16-2014, at approximately 1100 hours, Sgt. Cartwright, OCDA Inv. Fulcher, and I met with Gerrit Vos' father, [REDACTED] and [REDACTED] in the Chief's Conference Room at NBPD. Investigator Fulcher and I outlined the series of events and Gerrit Vos' actions leading up to the officer involved shooting. Investigator Fulcher assured [REDACTED] that his office would conduct an impartial and thorough investigation into the involved officers' actions.

On 8-15-2014, NBPD Sgt. Cartwright provided me a DVD which contained the surveillance video from 7-Eleven store. I reviewed the video which chronicled Vos' erratic behavior leading up to the officer involved shooting. I booked the DVD into evidence at NBPD.

On 12-8-2014, Deputy District Attorney Jason Baez of the Orange County District Attorney's Office issued his legal opinion as to the use-of- force by Officer Henry and Officer Farris against Gerrit Vos. In a letter addressed to NBPD Chief Johnson, Baez detailed the events and circumstances leading up to Vos' death. After reviewing the all of the information regarding this incident, Baez concluded that Gerrit Vos had committed the felony crime of PC 245(a)(1) and that Officer Farris' and Officer Henry's use of deadly force against Gerrit Vos was legally justifiable pursuant to Penal Code Sections 196 and 197. A copy of Baez's letter is attached to this report.

On 2-24-2015, NBPD Sgt. Depweg provided me eight CD/DVD's related to the OCDA's investigation of this incident. The CD/DVD's contained all of the investigative reports, audio files from the interviews conducted, photographs, autopsy and crime lab reports, surveillance video, patrol car video, radio traffic, communications/911 calls, and the related media coverage of the incident. The CD/DVD also contained Investigator Fulcher's 35-page investigative summary. For complete details regarding the interviews conducted by the OCDA's office, please refer to the aforementioned investigative reports.

Upon review of the information and reports referenced herein, it appears to me as though Gerrit Vos committed the felony crimes of PC 245(a)(1)-Assault with a Deadly Weapon and PC 245(c)-Assault with a Deadly Weapon Against a Peace Officer. Based upon the fact that Gerrit Vos is deceased, I recommend the case status be updated to "exceptionally cleared."

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Investigator Signature

Supervisor Signature

**Related Incident Reports****Case #: 14003952**

Related Case #	Agency	Description/Offense
14005998	NBPD	Related Case entered from 14005998 / MURDER

## Crime Scene Security Log

assumed control from J. JOHNSON #474 (CMFD) on 05.29.14  
 (Officer) (Date)  
 at 2044 at 1495 SUPERIOR  
 (Time) (Location)

The below listed persons entered the crime scene while I was on duty.

NAME	ENTERED		EXIT		PURPOSE
	DATE	TIME	DATE	TIME	
LT. LEWIS	05.29.14	2051	05.30.14	0049	NB
SGT CARPENTIERI	05.29.14	2031	05.30.14	0625	NB
OFCR KRESGE	05.29.14	2021	05.29.14	2345	NB
SGT STARN	05.29.14	2025	05.30.14	0118	CM - SUPERVISOR
OFCR. J BROWN	05.29.14	2025	05.30.14	0120	CM - WATCHED AR-15
OFCR. FARRIS	05.29.14	2034	05.29.14	2057	NB OIS
OFCR. BUSH	05.29.14	2032	05.29.14	2057	NB OIS
OFCR. K MENG	05.29.14	2035	05.29.14	2122	CM - WATCHED AR-15
OFCR. GILBERT	05.29.14	2033	05.30.14	0625	NB
SGT. R JOHNSON	05.29.14	2034	05.29.14	2045	NB
SGT. RASMUSSEN	05.29.14	2031	05.30.14	0625	NB
OFCR. LONG	05.29.14	2031	05.29.14	2345	NB
OFCR. M JOHNSON	05.29.14	2027	05.30.14	0625	CM - WATCHED EXIT DOOR
OFCR. FLETCHER	05.29.14	2034	05.29.14	2345	NB
OFCR. J. JOHNSON	05.29.14	2027	05.30.14	0230	CM - CRIME SCENE LOG
OFCR. R. HENRY	05.29.14	2025	05.29.14	2057	NB OIS
OFCR. PREASMYER	05.29.14	2027	05.29.14	2345	NB
OFCR. SHEN	05.29.14	2027	05.29.14	2248	NB
OFCR. MASLIN	05.29.14	2045	05.29.14	2141	NB
DEP. CHIEF McBILL	05.29.14	2110	05.29.14	2345	NB
MIGUEL ARMENTA	05.29.14	2026	05.29.14	2350	7-11 CASHIER
OFCR. SCHUSTER	05.29.14	2021	05.29.14	2057	NB OIS
OFCR. HOUSTON	05.29.14	2035	05.29.14	2049	NB - LEFT IN AMBULANCE
CHIEF GAZSI	05.29.14	2158	05.29.14	2220	CM
CHIEF JOHNSON	05.29.14	2213	05.29.14	2315	NB
LT. J. SHORT	05.29.14	2220	05.30.14	0240	NB

was relieved by M. JOHNSON #415 (CMFD) on 05.30.14 /0230  
 (Officer) (Date)

Reporting Officer: 42.w4 (PD 112)

Serial Number: \_\_\_\_\_

## Crime Scene Security Log

assumed control from J. JOHNSON #474 (CMFD) on 05-29-14  
 (Officer) (Date)  
 at 1495 SUPERIOR (Location)

The below listed persons entered the crime scene while I was on duty.

NAME	ENTERED		EXIT		PURPOSE
	DATE	TIME	DATE	TIME	
CSI GAGE	05-29-14	2220	05-30-14	0025	NB
CSI FITZGERALD	05-29-14	2220	05-30-14	0025	NB
CAPT TAJERON	05-29-14	2044	05-29-14	2049	NB ENGINE 62
ENG DAVENPORT	05-29-14	2044	05-29-14	2049	NB ENGINE 62
FF KAFORD	05-29-14	2044	05-29-14	2049	NB ENGINE 62
PM NESSA	05-29-14	2044	05-29-14	2049	NB ENGINE 62
PM SCHWEIGMAN	05-29-14	2044	05-29-14	2049	NB ENGINE 62
OFCR MAISAND	05-29-14	2345	05-30-14	0635	
PATRON	05-30-14	0023	05-30-14	0550	CRIME LAB
OLSON	05-30-14	0023	05-30-14	0620	CRIME LAB
MOORE	05-30-14	0023	05-30-14	0620	CRIME LAB
MOROLEK	05-30-14	0023	05-30-14	0042	<del>BBB</del> NB
HESTER	05-30-14	0023	05-30-14	0038	DA OFFICE
FULCHER	05-30-14	0023	05-30-14	0042	DA OFFICE
BRADLEY	05-30-14	0023	05-30-14	0625	DA OFFICE
MONARCH	05-30-14	0023	05-30-14	0625	NB
ANDERSEN	05-30-14	0023	05-30-14	0033	DA OFFICE
GUTIERREZ	05-30-14	0023	05-30-14	0041	DA OFFICE
CARTWRIGHT	05-30-14	0023	05-30-14	0052	NB
DEPINNO	05-30-14	0023	05-30-14	0052	NB
HAMILTON	05-30-14	0023	05-30-14	0048	NB
CAPT JOHNSON	05-30-14	0023	05-30-14	0057	NB
J. TRAN	05-30-14	0258	05-30-14	0620	CRIME LAB
OFCR PRIESTMYER	05-30-14	0455	05-30-14	0506	NB
	05-30-14	0517	05-30-14	0520	OWNER 7-11 MARKET
	05-30-14	0550	05-30-14	0525	OWNER 7-11 MARKET
	05-30-14	0550	05-30-14	0625	MANAGER 7-11

was relieved by M. JOHNSON #415 (CMFD) on 05-30-14 / 0230  
 (Officer) (Date)

Reporting Officer: \_\_\_\_\_  
 7-42.W4 (PD 112)

Serial Number: \_\_\_\_\_



OFFICE OF THE

# DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

**JIM TANIZAKI**  
SENIOR ASSISTANT D.A.  
VERTICAL PROSECUTIONS/  
VIOLENT CRIMES

**JOSEPH D'AGOSTINO**  
SENIOR ASSISTANT D.A.  
GENERAL FELONIES/  
ECONOMIC CRIMES

**MICHAEL LUBINSKI**  
SENIOR ASSISTANT D.A.  
SPECIAL PROJECTS

**JAIME COULTER**  
SENIOR ASSISTANT D.A.  
BRANCH COURT OPERATIONS

**CRAIG HUNTER**  
CHIEF  
BUREAU OF INVESTIGATION

**LISA BOHAN - JOHNSTON**  
DIRECTOR  
ADMINISTRATIVE SERVICES

**SUSAN KANG SCHROEDER**  
CHIEF OF STAFF

December 8, 2014

Chief Jay R. Johnson  
Newport Beach Police Department  
870 Santa Barbara Dr.  
Newport Beach, CA 92660

Re: Officer-Involved Shooting on May 29, 2014  
Fatal Incident involving Gerrit Dean Vos  
District Attorney Investigations Case # S.A. 14-008  
Newport Beach Police Department Case # 14-3952  
Orange County Crime Laboratory Case # 14-47261

Dear Chief Johnson,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the fatal officer-involved shooting incident involving on-duty Newport Beach Police Department (NBPD) Officers Richard Henry and Nathan Farris. Gerrit Dean Vos, 22, died as a result of his injuries. The incident occurred in the City of Newport Beach on May 29, 2014.

## OVERVIEW

This letter contains a description of the scope of, and the legal conclusions resulting from, the OCDA's investigation of the May 29, 2014, fatal officer-involved shooting of Vos. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the NBPD Officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On May 29, 2014, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, the OCDASAU interviewed 24 witnesses and contacted 28 additional witnesses during the supplemental canvass interviews. Investigators also obtained and reviewed the following: NBPD reports, audio and video recordings, dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Vos; criminal history records related to Vos, including prior incident reports; and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of NBPD Officers or personnel, specifically Officers Henry and Farris. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

## **INVESTIGATIVE METHODOLOGY**

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy District Attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain statements from the involved Officers. Officer Henry and Officer Farris each gave separate, voluntary statements to OCDA Investigators on June 3, 2014, and July 10, 2014, respectively.

## **FACTUAL SUMMARY**

Gerrit Dean Vos was a 22-year-old male who had been diagnosed with schizophrenia. Vos had been in multiple drug rehabilitation programs approximately over the past six years. In 2013, Vos started using methamphetamine heavily, which resulted in him staying in a drug and alcohol treatment and rehabilitation center located in San Clemente, California.

On May 27, 2014, Vos called John Doe #1, a friend he had known since 2012, and asked if he could visit John Doe #1 at his apartment, located on West 15<sup>th</sup> Street in Newport Beach. John Doe #1 had not heard from Vos for approximately four to five months prior to the telephone call. Vos arrived at John Doe #1's apartment and gave haircuts to John Doe #1 and a friend of John Doe #1. John Doe #1 described Vos as seeming normal and stated that Vos did not display any unusual behavior.

On May 29, 2014, at approximately 7:30 p.m., Vos arrived unexpectedly at John Doe #1's apartment. John Doe #1 described Vos as being "not himself" and acting paranoid. Vos told John Doe #1 that there were people outside watching him (Vos). Vos frequently yelled, "Come and get me!" and, "I'm here.... I'm here!" for no apparent reason and at no particular person.

At approximately 8:00 p.m., Vos continued to act in a strange manner, and John Doe #1 became concerned for the safety of his 10-year-old son, who was also present at John Doe #1's apartment. John Doe #1 gave Vos a skateboard, and told Vos he was scaring his son. John Doe #1 then told Vos to "leave and clear his head." Vos left the apartment and did not return. As far as John Doe #1 knows, Vos did not ingest any illegal drugs or medication while at John Doe #1's apartment.

At approximately 8:15 p.m., Vos arrived at the 7-Eleven convenience store located at 1495 Superior Avenue, in Newport Beach. According to witnesses, Vos rode a skateboard into the north parking lot of the store, and was talking to himself as he approached 7-Eleven's front doors.

At approximately 8:16 p.m., Vos rushed into the 7-Eleven, ducked between two aisles, and appeared to be hiding from someone. According to witnesses, as he hid, Vos stated that someone was trying to kill him. Approximately five to ten

seconds later, John Doe #2 walked into the 7-Eleven and went directly to the refrigerated section to purchase a beverage. As John Doe #2 approached the refrigerators, Vos removed a screwdriver from a display shelf and ran down the aisle towards John Doe #2 and began yelling and swearing at him. According to witnesses, Vos shouted, "Get the f\*\*\* out of here, f\*\*\* you, get the f\*\*\* out of here!"

Vos then turned his attention to John Doe #3, a customer who had been standing in line at the checkout counter to make a purchase. According to witnesses, Vos yelled at John Doe #3, "That's the mother f\*\*\*\*\* right there!" John Doe #3 feared Vos was going to stab him with the screwdriver so he turned and headed towards the front door to exit the 7-Eleven. As he ran outside, he noticed Vos running close behind him. Vos yelled, "You can't get me." As John Doe #3 was running in the parking lot, Vos threw the screwdriver at John Doe #3, which missed John Doe #3 and hit a parked car.

Vos then re-entered the 7-Eleven. Vos told the 7-Eleven store clerks "Shoot me," and, "I know you have a gun." NBPD received a 911 emergency call from one of the 7-Eleven store clerks, who requested police assistance as a result of the erratic behavior being exhibited by Vos. The other 7-Eleven store clerk feared Vos may attempt to harm an employee or customer, so he went into the office area behind the cash register counter to look for something he could possibly use to defend himself against Vos.

At approximately 8:19 p.m., Vos jumped over the counter and entered the area behind the employee counter. Vos asked the store clerks if a gun was there. Vos took an approximately 12" pair of scissors from one of the shelves and walked out from behind the counter. After yelling that he had scissors, Vos approached the front doorway of the 7-Eleven. When Vos re-entered, Vos took off his jacket and jumped over the counter a second time. Vos then grabbed one of the 7-Eleven store clerks. The second 7-Eleven store clerk, fearing Vos was about to stab his coworker with the scissors, reached for Vos' right hand in an attempt to disarm him. Vos twisted his arm away, and the two men wrestled for control of the scissors. During the altercation, the 7-Eleven store clerk received an approximately two to three inch laceration to the palm of his right hand from the scissors.

Vos was able to maintain possession of the scissors and walked away from behind the counter area. Vos went to the front doorway and then again re-entered the store. Vos then jumped over the employee counter a third time, searched through the drawers behind the counter and yelled, "Where's the gun?"

At approximately 8:21 p.m., NBPD Officer Dave Kresge arrived on scene and observed Vos standing behind the cash registers on the front counter. According to Officer Kresge, Vos appeared "visibly agitated," with his hands tensed up in front of him and was screaming and yelling unintelligible words. Officer Kresge believed that Vos was under the influence of drugs or bath salts. Both store clerks exited the 7-Eleven once Officer Kresge arrived on scene.

A short time later, Vos was standing behind the front counter looking out the 7-Eleven's glass doors towards Officer Kresge who was waiting outside for backup to arrive. Vos put his right hand behind his back near his waist. According to Officer Kresge, Vos then pantomimed having a gun, by wrapping his right hand in a dark article of clothing and brought the arm parallel with the floor pointing it out the doors. Officer Kresge believed Vos was trying to get Officer Kresge to shoot Vos. Kresge broadcasted on the police radio the updated information.

Additional NBPD officers arrived on scene and Vos closed himself inside the room located behind the cash registers. NBPD Sergeant Peter Carpentieri, Sergeant Rachel Johnson, Sergeant Steve Rasmussen, and Officers Nathan Farris, Richard Henry, Shawn Preasmyer, Andrew Shen, Adam Gilbert, Michael Fletcher and Todd Bush positioned themselves to the north side of the glass front doors of the 7-Eleven.

Two NBPD vehicles were parked in a "V" formation directly south of the front entrance doors of the 7-Eleven. Officer Shen, armed with a NBPD issued Defense Technology 40 millimeter less lethal launcher, was positioned behind the driver door of one of the vehicles. Officers Farris and Henry were each armed with a NBPD issued AR-15 rifle, and were positioned behind the other doors of the police vehicles. Officer Kresge was also positioned behind a door of one of the police vehicles, armed with his department issued handgun.

At approximately 8:39 p.m., several NBPD Officers opened both glass entrance doors of the 7-Eleven and propped them open. At approximately 8:42 p.m., Vos opened the door to the room behind the cash registers that he had been hiding inside of and abruptly exited. Officer Henry observed the door open and advised the other officers that Vos was coming out. Vos immediately began to run south from the door, and upon clearing the west end of the front counter, turned east and ran at full speed toward the open entrance/exit doors where officers were positioned. Vos had a two prong, approximately six inch metal display hook in his left hand, with his arm raised above his head. Officer Farris described the object being held by Vos in a "stabbing position."

As Vos ran towards the Officers positioned outside, Officer Preasmeyer used the public address system of one of the NBPD vehicles to order Vos to "drop the weapon." Vos disregarded the order, and continued sprinting toward the doors, closing the distance at a rapid pace. Vos did not say anything as he ran towards the officers.

According to Officer Shen, Vos was running toward the officers with an object in his left hand, which was elevated above his head. When Vos reached the door to the 7-Eleven, it was Shen's intention to try and put him down with the less lethal weapon, so that officers would not have to use lethal force against Vos. Shen fired the 40 millimeter less lethal projectile at Vos when Vos was about half way to the doors of the 7-Eleven. Officer Shen did not see whether or not the projectile struck Vos, but stated that it had no effect on Vos and Vos continued advancing.

According to Officer Henry, Vos advanced to a point approximately three to four feet inside the 7-Eleven doors. Officer Henry estimated that at the pace Vos was advancing, he would cover the remaining distance between him and the officers in less than one second. According to Officer Henry, he also saw that Vos was armed with a weapon, he did not know what the weapon was, but he was thinking it was scissors because Vos previously had been armed with scissors. Officer Henry believed that Vos could utilize the weapon to harm the officers if he reached their position. This fear, coupled with his belief that Vos would be upon them within one second, led Officer Henry to discharge his AR-15 four times.

According to Officer Farris, he saw Vos sprinting at them with his left hand elevated, holding a metallic object in what Farris described as a "stabbing position." When Vos was approximately four feet from the threshold of the 7-Eleven doors, leaving a distance of less than 10 feet between him and the officers, Officer Farris feared Vos was going to continue his advance and "kill his partner" or himself, so he fired his AR-15 four times.

After Vos was struck by the bullets, Vos continued running east out of the doors of the 7-Eleven, bending at the waist and rolling forward onto the sidewalk outside of the doors. Vos' forward momentum caused him to come to rest on his back with his upper torso on the sidewalk and his lower body in the parking lot. Vos' legs were at the front of and in between the two NBPD vehicles.

At approximately 8:43 p.m., Sergeant Rachel Johnson broadcast "998" (Officer involved in shooting). At approximately 8:44 p.m., Newport Beach Fire Department (NBFD) paramedics were cleared to enter the scene and begin treating Vos. NBFD paramedics removed Vos' shirt, completed spinal immobilization with a cervical collar, and examined his wounds. Vos was administered oxygen via an Oropharyngeal airway. An Intravenous Therapy (IV) line was attempted, but Vos' positioning on a backboard and low blood pressure prevented vascular access. Series vitals obtained at 8:54 p.m., 8:59 p.m., and 9:04 p.m. indicated that Vos' blood pressure was in steady decline.

At approximately 8:54 p.m., Vos was transported to Western Medical Center-Santa Ana (WMCSA) by NBFD Medic 62. While en route to WMCSA, paramedics monitored Vos' vital signs, assisted his breathing with positive pressure ventilation, and administered a Needle Thoracostomy due to falling oxygen saturation levels. The Thoracostomy was successful but failed to raise Vos' oxygen saturation levels.

Vos did not make any statements while in transport. NBFD Medic 62 arrived at WMCSA at approximately 9:03 p.m., at which time care of Vos was relinquished to the on duty trauma surgeon at WMCSA. Upon arrival, Vos was unconscious and had no pulse.

Upon taking over care of Vos from the NBFD paramedics, the on duty trauma surgeon resuscitated Vos and administered blood products and saline via IV lines. The attending trauma surgeon performed a Thoracotomy on Vos to gain access to his organs, and upon doing so he located a hole in Vos' heart and numerous holes in his lungs. The on duty trauma surgeon transferred Vos into an operating room for surgery, and additionally discovered two holes in Vos' liver, one in his colon, and one in his diaphragm. Vos' condition continually deteriorated as a result of his wounds. At 10:18 p.m., Vos was declared dead by the attending trauma surgeon.

**Post-Shooting, Voluntary Statement of NBPD Officer Richard Henry**

The majority of Officer Henry's statement is featured in the Factual Summary above. The following paragraphs highlight some of the pertinent factors regarding Officer Henry's state of mind throughout the incident.

Officer Henry gave a voluntary, consensual statement to OCDA investigators on June 3, 2014. According to Officer Henry, upon his initial arrival at the 7-Eleven he observed Vos yelling in the direction of Officer Kresge. Officer Henry observed that Vos was very agitated and angry. Officer Henry recalled that at one point Vos was yelling at Officer Kresge to shoot him (Vos). Henry also observed Vos was making a shooting motion towards Officer Kresge while Vos' arm was wrapped up in a sweatshirt or cloth. Officer Henry's initial thoughts were that Vos' behavior was consistent with someone who had been using methamphetamine for "seven days straight."

According to Officer Henry, he was aware that Vos went inside the room behind the checkout counter of the 7-Eleven and closed the door. Henry observed Vos exit the room and come back into view of the officers. As Vos ran towards the officers outside the 7-Eleven, Officer Henry was able to see Vos' upper torso area and Vos' elevated hand with a metal object in it "protruding out of his hand a good six or eight inches." Officer Henry heard the police public address system from his vehicle being used by another officer who was commanding Vos to "drop the weapon."

Officer Henry stated that he initially believed the metal object in Vos' hand to be scissors, since Officer Henry had earlier heard over dispatch that Vos had scissors in his possession. According to Officer Henry, Vos was in a full-on sprint towards the officers positioned outside of the 7-Eleven's open glass doors. According to Officer Henry, at this point he feared for the safety of his fellow officers if Vos was able to reach their position, and when Vos was about three or four feet from exiting through the 7-Eleven's entrance doors, Officer Henry made the decision to fire his weapon. Officer Henry believed Vos would have killed or attempted to kill his partners upon exiting the doors. Officer Henry stated that Vos fell within three feet of the officers and that Vos would have reached the officers in less than a second from the time he (Officer Henry) fired his weapon.

**Post-Shooting, Voluntary Statement of NBPD Officer Nathan Farris**

The majority of Officer Farris' statement is featured in the Factual Summary above. The following paragraph highlights some of the pertinent factors regarding Officer Farris' state of mind throughout the incident.

Officer Farris gave a voluntary, consensual statement to OCDA investigators on July 10, 2014. According to Officer Farris, while he was en route to the 7-Eleven after having been dispatched to respond there, he heard Officer Kresge broadcast over the radio that the subject (Vos) was inside of the store and motioning to Kresge as if he had a gun. Officer Kresge advised Officer Farris and the other officers en route that the male subject had gone inside the 7-Eleven's back room. After arriving at the 7-Eleven, Officer Farris also learned that Vos had assaulted someone with scissors.

When Officer Farris arrived on scene he initially took the 40 millimeter less lethal launcher from his vehicle. According to Officer Farris, prior to taking a position behind one of the vehicles, he noticed that Officer Shen had already retrieved a 40 millimeter less lethal launcher. At that point Officer Farris returned to his vehicle and retrieved the AR-15 patrol rifle, and relinquished the 40 millimeter less lethal launcher because he knew that Officer Shen already had that weapon system. Officer Farris then took up a position behind the passenger door of one of the NBPD police vehicles.

According to Officer Farris, he first saw the upper torso of Vos once Vos exited the back room of the 7-Eleven. Officer Farris stated that Vos exited the back room and ran "very rapidly," "bobbing and weaving from side to side" in an erratic manner. At this point, Officer Farris became concerned for his safety and the safety of the officers he was with.

After Vos went around the counter, Officer Farris stated that Vos ran towards the doors of the 7-Eleven. Officer Farris noticed a metallic object in Vos' left hand, which Vos held over his head in what Officer Farris considered a "stabbing position." Once Vos, who was running at full sprint towards the officers, came within approximately four feet from reaching the front doors, and 10 feet from the officers, Officer Farris feared that Vos was going to kill him or his partner, and Officer Farris made the decision to fire his AR-15.

#### **Post-Shooting, Voluntary Statement of NBPD Officer Andrew Shen**

Officer Andrew Shen gave a voluntary, consensual statement to OCDA investigators on June 3, 2014.

According to Officer Shen, when his unit was en route to the 7-Eleven he heard over the police radio about a male subject simulating that he had a potential weapon like a handgun and that the subject may be mentally unstable. Officer Shen eventually positioned himself behind the driver's side door of a police vehicle with a 40 millimeter less lethal weapon.

Officer Shen stated that he heard other officers shout that the subject had come out of the back room of the 7-Eleven, and when he looked up he saw Vos sprinting at his position. According to Officer Shen, Vos had his hand up and was making a "stabbing motion" with his hand while he was running towards officers. Officer Shen stated that he felt threatened and viewed Vos' actions to be a danger to officers, so he fired the 40 millimeter less lethal projectile at Vos when Vos was about half way to the doors of the 7-Eleven.

According to Officer Shen, he aimed for Vos' lower abdomen when he fired the less lethal projectile as he had been trained to do. Officer Shen stated that he put the weapon's sights onto Vos' abdomen before firing it. Officer Shen stated he did not see if the projectile struck Vos. According to Officer Shen, the shot didn't affect Vos and Vos just kept advancing. Officer Shen heard the other officers open fire after he had fired his 40 millimeter less lethal projectile at Vos, but before Vos reached the 7-Eleven entrance doors.

According to Officer Shen, it would not have been possible to reload a second 40 millimeter less lethal round into his weapon and fire it at Vos before Vos would have closed the distance between himself and the officers.

#### **Post-Shooting, Voluntary Statement of NBPD Officer Dave Kresge**

Officer Dave Kresge gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

Officer Kresge was the first officer to arrive on scene at the 7-Eleven responding to the 911 call. According to Officer Kresge, one of the store clerks told him that Vos had chased them with scissors. Officer Kresge stated that he observed Vos was "visibly agitated" inside of the store and screaming. Kresge observed Vos making hand motions "trying to rouse [Kresge] into believing that he (Vos) had a gun." Vos put his right hand behind his back and hid his left hand against his chest. Vos also wrapped his hand in a jacket or shirt and held his hand in the air. Officer Kresge stated that he believed Vos was trying to get Kresge to shoot him (Vos). Officer Kresge stated that he broadcasted this updated information on the police radio. As other NBPD officers responded, Vos closed himself inside a room behind the cash registers.

According to Officer Kresge, two NBPD vehicles were placed in a "V" position facing the 7-Eleven to create cover for police officers. Officer Kresge took up a position of cover behind the passenger side door of the NBPD police vehicle facing northwest. Approximately eight to 10 minutes later, Vos reemerged. Officer Kresge stated that Vos was running "full stride" around the front counter and towards the officers outside the front door. According to Officer Kresge, he heard another officer yell "Shoot!" when Vos was approximately 10 to 12 feet from the door. Officer Kresge pointed his handgun at Vos but did not fire because he was not "on target" when he heard "Shoot." Officer Kresge was unable to see Vos' hands from his position.

### **Voluntary Statement of 7-Eleven Store Clerk John Doe #4**

7-Eleven store clerk John Doe #4 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #4, at the time of the incident he was working with another clerk, John Doe #5. According to John Doe #4, he was assisting a female customer with her purchase when Vos entered the store. Vos rushed into the store, ducked between two aisles, and appeared to be hiding from someone. As Vos hid, he told John Doe #4 that someone was trying to kill him. Approximately five to 10 seconds later, another customer walked in and went directly to the refrigerated section of the store. Vos removed a screwdriver from a display shelf and approached the customer and yelled, "Who's going to try to kill me?" and some other "bad words." According to John Doe #4, Vos continued to swear at and threaten the customer. The customer eventually left the store to get away from Vos.

John Doe #4 stated that Vos exited and then re-entered the 7-Eleven one or two minutes later, and continued to yell unintelligibly. The other store clerk on duty called 911 for help. Fearing that Vos may attempt to harm him or a customer, John Doe #4 stated that he went into the back room of the store to look for something he could defend himself with. While he was in the back room, Vos entered the area behind the employee counter and continually asked the other store clerk "Where's the gun, where's the gun?" while searching through the shelves and cabinets behind the counter. John Doe #4 stated that Vos then grabbed a pair of scissors, approximately 12 inches in length, from one of the shelves.

According to John Doe #4, Vos then grabbed the other store clerk from behind. John Doe #4 feared Vos would stab his coworker with the scissors, so he tried to disarm Vos of the scissors. John Doe #4 received an approximately two to three inch laceration on the palm of his hand during the ensuing struggle for the scissors, and was unable to gain control of the scissors. John Doe #4 stated that as Vos continued to pace around the store, Vos put his hands behind his head and yelled "Shoot me, shoot me!" Vos then again jumped over the employee counter and again yelled, "Where's the gun, where's the gun?"

Both store clerks exited the 7-Eleven once officers arrived on scene.

### **Voluntary Statement of 7-Eleven Store Clerk John Doe #5**

7-Eleven store clerk John Doe #5 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #5, he was sitting in his car in the store parking lot while on his break when he observed Vos walk inside the front door of the 7-Eleven while talking to himself. According to John Doe #5, a few seconds later he heard someone scream and then heard the sound of something being thrown and hitting a car in the parking lot. John Doe #5 walked into the store, and Vos said, "Shoot me," and Vos also said to John Doe #5 and his co-worker, "I know you have a gun." John Doe #5 called 911 and told the police dispatcher that Vos was in his store screaming and was "out of his mind or on drugs."

John Doe #5 stated that as soon as he hung up the phone with 911, Vos jumped over the counter, grabbed a pair of scissors, and raised his arm up with the scissors. John Doe #5 believed that Vos attempted to stab him. His coworker John Doe #4 cut his hand when he and Vos struggled for control of the scissors. Vos then walked outside, put his hands behind his head, and yelled, "Shoot me, shoot me!" Vos walked back in the store, again asked where they kept their guns, and searched around the shelves behind the counter. At one point, Vos put his arm around John Doe #5's neck. John Doe #5 pulled Vos' arm off from him. Both store clerks exited the 7-Eleven while Vos appeared distracted. John Doe #5 looked back and saw Vos go into the store office and close the door.

### **Voluntary Statement of Civilian Witness John Doe #3**

Civilian witness John Doe #3 gave a voluntary, consensual statement to OCDA investigators on May 30, 2014.

According to John Doe #3, he stopped by the 7-Eleven to purchase something to drink around 8:10 p.m. on May 29, 2014. As he stood in line at the front counter, he saw Vos enter the store through the front doors. John Doe #3 stated that Vos kept looking out of the window of the store as if someone was following him, and that Vos appeared agitated, paranoid,

and used profanity while in the store. When another customer entered the store and walked down an aisle towards Vos' location, Vos lunged at that customer with an unknown object in his hand. The other customer jumped back and left the store. Vos then noticed John Doe #3, and yelled to him, "That's the mother f\*\*\*\*\* right there!" John Doe #3 stated that at this time he noticed Vos was holding a screwdriver in his hand. John Doe #3 became frightened and ran to the front doors. John Doe #3 ran outside and noticed Vos was running close behind him. John Doe #3 stated that he was afraid Vos was going to stab him to death with the screwdriver. As the two men ran into the parking lot, Vos threw the screwdriver at John Doe #3, but it missed and hit a parked car behind him. Vos then walked back towards the store.

### **7-Eleven Surveillance Video**

The 7-Eleven store equipment was recording surveillance video at the time of this incident from several different cameras. Some of the video also contains audio from the incident. A review of the videos shows that while inside the 7-Eleven, Vos yelled several phrases that were caught by the audio, such as: "Kill me already," "I got a strap," "I got a gun right here," "You want me dead," "Waste me," "I've got scissors," "Where's the gun," "Kill me already, please," "I'm holding a hostage," "Shoot me in the head already," and again "Kill me already."

### **EVIDENCE COLLECTED**

The following items were collected from the scene:

- One Colt AR-15A#, serial # LBD020095, one cartridge, head stamp FC11223 REM, with a loaded magazine in the weapon;
- One Colt AR-15A#, serial # LBD001239, one cartridge, head stamp FC11223 REM, with a loaded magazine in the weapon;
- One expended less lethal projectile;
- One Defense Laboratory 40mm, less lethal weapon launcher, serial #D23877;
- Four .223 cartridge cases, head stamp "FC11223REM";
- One cartridge case, head stamp "\*38\*";
- Two metal merchandise display hooks;
- One T-shirt, navy blue with white writing on the front, cut in half, apparently saturated with blood;
- Four .223 cartridge cases, head stamp "FC11223REM";
- One skateboard, black top, brown wood bottom, orange wheels;
- Three apparent bullet fragments; and
- Clothing consisting of one black and gray cloth sweat shirt and one black jacket.

### **EVIDENCE ANALYSIS**

#### **Firearm Examination**

A forensic scientist at the Orange County Sheriff's Department Crime Lab examined the following items of evidence:

1. Colt Model AR-15A3 rifle, .223 Remington caliber, serial number LBD020095 with two magazines.
2. Colt Model AR-15A3 rifle, .223 Remington caliber, serial number LBD001239 with two magazines.
3. Eight cartridge cases and four apparent bullet fragments gathered at the scene.
4. Four bullets and one apparent bullet fragment from Vos' autopsy.

A firearms examination and comparison of all of the firearms related to this investigation yielded the following results:

Both semiautomatic Colt rifles used by Officers Henry and Farris fired without malfunction. The eight cartridge cases collected at the scene were all Federal brand .223 Remington caliber. The cartridge cases were microscopically compared to test fired cartridge cases from the two Colt rifles used by Officers Henry and Farris. All eight cartridge cases were determined to have been fired from these two rifles. The bullet fragment recovered during the autopsy from the spine of Vos was determined to have been fired from the officers' rifles. The bullets recovered during the autopsy from the right side, right hip, and left side back of Vos were also forensically consistent as having been fired from the officers' rifles.

### Autopsy Findings

On June 3, 2014, Dr. Etoi Davenport, a forensic pathologist with the Orange County Coroner's Office, conducted a post-mortem examination of Vos. Dr. Davenport determined that Vos suffered four gunshot entry wounds to the left shoulder, left chest, right chest area and to the left thigh. In addition, Dr. Davenport also observed a red circular bruise on the center of Vos' chest located near the lower portion of the sternum that was 3/4 to 7/8 of an inch in diameter. This injury is consistent with the result of being hit by the less lethal projectile fired by Officer Shen. At the conclusion of the autopsy, Dr. Davenport concluded that Vos' cause of death was multiple gunshot wounds.

### Toxicology Report

A toxicology exam was conducted on Vos' postmortem blood to test for alcohol, prescription drugs, and common drugs of abuse. No alcohol was detected and the following results and interpretations were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.104 ± 0.007 mg/L
Methamphetamine	Postmortem Blood	1.63 ± 0.11 mg/L

### Vos' Prior Criminal History

Vos had a State of California Criminal History Record that revealed arrest for the following violations:

- Violation of Health and Safety Code section 11350(a) (Possession of Controlled Substance: Cocaine) in 2011.
- Violation of Health and Safety Code section 11350(a) (Possession of Controlled Substance: Heroin); Penal Code section 21810 (Possession of Metal Knuckles); and Health and Safety Code section 11364.1(a) (Possession of Controlled Substance Paraphernalia) in 2012.

### STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to lawfully convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a, case law, and criminal jury instructions.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when "necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest." The felony must be a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333).

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person."

California Penal Code Section 835a provides that any "peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

In addition, Penal Code section 834a states that if "a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest."

Similarly, the relevant Criminal Jury Instructions as written by the Judicial Council of California and set forth in CALCRIM 3470 permit a person to defend himself/herself from attack if: 1) the person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury, 2) the person reasonably believed the immediate use of force was necessary to defend against that danger, and 3) the person used no more force than was reasonably necessary to defend against that danger.

The law as detailed in CALCRIM 3470 therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or reasonably apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642).

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court's precedent that limits the right of a police officer to use deadly force. In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving." (*Id.* at 396-397). Thus, the "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (*Id.* at 396).

In *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, the Fourth District Court of Appeal stated that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it. [Police officers] are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, '... the defendant police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.'" (*Id.* at 527). The *Brown* court held that the "question is whether a peace officer's actions were objectively reasonable based on the facts and circumstances confronting the peace officer. The test is highly deferential to the police officer's need to protect himself and others." (*Id.*). The court elaborated that "we must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (*Id.* at 528). Therefore, an "officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Id.*).

## **LEGAL ANALYSIS**

The issue is whether the conduct of Officers Henry and Farris on the night of May 29, 2014, was criminally culpable and without justification. In order to lawfully charge either Officer Henry or Officer Farris with a crime, the prosecution must prove beyond a reasonable doubt that the officers did not act in lawful self-defense or defense of others. Considering all the available evidence of this incident, the prosecution cannot prove beyond a reasonable doubt that Officers Henry and Farris did not act in lawful self-defense. Therefore, no criminal charges are warranted. More specifically, all the available evidence in this case clearly proves that Officers Henry and Farris acted lawfully and were justified in shooting Vos.

Pursuant to Penal Code section 196, the shooting was clearly committed during the lawful attempt to arrest the resistant Vos for a felony which reasonably created a fear of death or serious bodily harm to the officers. Officers Henry and Farris had probable cause to believe that Vos had committed a felony violation of Penal Code section 245(a)(1) (Assault with a Deadly Weapon) because they observed Vos running towards them, holding a metal object in his raised left hand in a stabbing position. Prior to shooting, the Officers knew Vos had ignored commands to drop the weapon. The Officers waited to shoot Vos until Vos was less than 10 feet from the Officers. Officer Henry reasonably believed Vos would cover the remaining distance in less than one second. Given these circumstances, both Officers stated they feared Vos would kill or attempt to kill an Officer. Both officers were justified and reasonable in so believing based on the totality of the circumstances.

Pursuant to Penal Code Section 197, the use of deadly force by Officers Henry and Farris was justifiable because the officers were "resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." Both Officers Henry and Farris stated that at the time they shot they believed Vos would kill or attempt to kill an officer. Vos also was engaged in the commission of a felony which reasonably created a fear of death or serious bodily harm to the officers because Vos was running towards the officers while holding a metal object in his raised left hand in a stabbing position.

Officers Henry and Farris acted within the lawful performance of their duties as a peace officer pursuant to Penal Code Section 835a. Both Officers had reasonable cause to believe that Vos committed a public offense and were entitled to use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Both Officers knew Vos had cut a store employee with scissors and observed Vos running towards them, holding a metal object in his raised left hand in a stabbing position. The level of force used by Officers Henry and Farris was legally justifiable pursuant to Penal Code sections 196 and 197 as detailed above, and the separate analysis listed below. Officers Henry and Farris had no duty to retreat or desist despite Vos' resistance or threatened resistance. Furthermore, under Penal Code section 835a, neither Officer shall be deemed an aggressor nor lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Officers Henry's and Farris' actions were also legally justified under CALCRIM 3470. Both Officers reasonably believed that they or another officer were in imminent danger of suffering bodily injury because they observed Vos running towards them, holding a metal object in his raised left hand, in a stabbing position. The two officers also knew Vos had ignored commands to drop the weapon. At the time they fired, the Officers reasonably believed the immediate use of force was necessary to defend against that danger because Vos had ignored commands to drop the weapon, was running at them, and was within 10 feet of the officers. Officer Henry believed Vos would cover the remaining distance in less than one second. This belief is reasonable and justifiable under the circumstances.

Case law provides a framework for the analysis of the circumstances when determining whether the Officers used no more force than was reasonably necessary to defend against the danger Vos posed. A police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others." (Garner, *supra*, 471 U.S. at p. 3). An officer's right to use force is to be analyzed under the Fourth Amendment's "objective reasonableness" standard in which the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving." (Graham, *supra*, 490 U.S. 386 at 396-397). Thus, the "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (*Id.* at 396). At the time they fired, both Officers Henry and Farris stated they believed Vos would kill or attempt to kill an officer. They observed that Vos had a metal object in his hand and was charging towards them. While the Officers did not have confirmation at the time they fired what exactly was in Vos' hand, a person's right of self-defense is the same whether the danger is real or reasonably apparent. (Jackson, *supra*, 233 Cal.App.2d at pp. 641-642). Officers Henry and Farris knew that Vos had already assaulted a store clerk with scissors, motioned to police officers as if he had a gun, and ignored commands to drop the weapon. It also objectively appeared as if Vos was not stopped by a less lethal 40mm projectile.

The *Brown* court stated that the "test is highly deferential to the police officer's need to protect himself and others." (*Brown*, *supra*, 171 Cal.App.4th at p. 527). The *Brown* court elaborated that we "must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." [Citation omitted]." (*Id.* at 528). Given the totality of the circumstances presented to Officers Henry and Farris in an uncertain and rapidly evolving situation, the Officers made a split second decision to fire rather than risk the lives of the police officers present. The Officers observed an armed suspect charging towards them, who had ignored commands, and who appeared to be unaffected by a less lethal projectile. The Officers waited to fire until Vos reached what Officer Henry believed was one second away from the officers. Indeed, Vos' body fell outside the 7-Eleven doors at the front of the NBPD vehicles where officers were standing. The *Brown* court's teaching that "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack," directly applies to the facts of this incident described above. Officers Henry and Farris confronted and armed Vos, running at them with his hand raised in a stabbing position within 10 feet of the officers' position. Given these facts and a legal framework that is highly deferential to a police officer's need to protect himself and others, the prosecution cannot prove beyond a reasonable doubt that the officers' split-second judgment about the level of force used was objectively unreasonable. The facts of this case clearly prove that Officers Henry and Farris did not commit a crime, on the contrary, they were lawfully discharging their duty when they were confronted by an unstable individual who had just attacked innocent civilians, and was now attacking the officers while ignoring their lawful commands.

In order for Officer Henry or Officer Farris to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that the Officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Vos. A review of all the available evidence collected in this investigation makes such a conclusion unreasonable and contrary to the facts.

#### CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Officer Henry or Officer Farris. There is significant and substantial evidence Officers Henry and Farris' actions were legally justified under the circumstances.

Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,



Jason Baez  
Deputy District Attorney  
Gang Unit



Read and Approved by **Ebrahim Baytih**  
Acting Assistant District Attorney  
Head of Court – Special Prosecutions Unit